Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

ISAIAH JORDAN AND DOROTHY JORDAN

v.

TOMMY MOSLEY AND MIKE KILE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN P. BATSON
303 Tenth Street
Augusta, GA 30901
Phone: (706) 737-4040
Counsel of Record
Attorney for Petitioner

QUESTIONS PRESENTED

I. Do Fourth amendment determinations of arguable/probable cause, as to the initial arrest, control the effect and existence of the post-arrest substantive and procedural protections found in the amendments independent of the Fourth, which are pled as the source amendments of the rights deprived in a §1983 claim asserting a wholesale deprivation of post-arrest rights?

II. As a fairly included question: Does Mrs. Jordan have standing to assert deprivations of liberty and property interests in the abuse of process claim?

III. As a fairly included question: Should summary judgment to Sheriff Kile be reversed, where the District Court erroneously engaged in weighing or crediting the evidence, and found insufficient evidence to show he caused the arrest?

LIST OF PARTIES

Plaintiff-Petitioner	Dorothy Jordan
Plaintiff-Petitioner	Isaiah Jordan
Defendant-Respondent	Mike Kile
Defendant-Respondent	Tommy Mosley
State of Georgia Attorney General	Thurbert E. Baker

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The Eleventh Circuit's opinion in the qualified immunity appeal is *Jordan and Jordan v. Mosley and Kile*, No. 06-11399 (11th Cir. June 1, 2007) (App. 19) reported at *Jordan v. Mosley*, 487 F. 3d 1350 (11th Cir. 2007). Per curiam denial of rehearing was Oct. 1, 2007, not in the Appendix.

After remand the District Court terminated the case. *Jordan and Jordan v. Mosley and Kile*, No. 6:04CV150 (S.D. Ga. Oct. 22, 2007). The decision was timely appealed.

The Eleventh Circuit opinion from which this petition is lodged is *Jordan and Jordan v. Mosley and Kile*, No. 07-15526 (11th Cir. Aug. 28, 2008).

A timely petition for Rehearing En Banc was filed September 18, 2008, and rehearing was denied January 15, 2009. App. 3.

This filing is timely. Rehearing denial was January 15, 2009. App. 3 & 4. This Court granted an extension until May 24, 2009, (App. 1) falling on Sunday. With Monday a legal Holiday, the deadline is Tuesday, May 26, 2009. FED.R.CIV. P. 6(a)(3); Fed.R. App.P. 26(a)(4).

BASIS FOR JURISDICTION

This Court's jurisdiction is under 28 U.S.C. § 1254(1).

The District Court had federal question jurisdiction. 28 U.S.C. §1331 and §1343(a)(3) & (4).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless a presentiment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the

Militia, when actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. V

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. amend. VI

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of

U.S. CONST. amend. VII

the United States, than according to the rules of the common law.

U.S. CONST. amend. XIV, § 1

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42 U.S.C. § 1983

Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

O.C.G.A. § 16-7-23(a)(1) (Criminal damage to property, second degree)

(a) A person commits the offense of criminal damage to property in the second degree when he:

(1) Intentionally damages any property of another person without his consent and the damage thereto exceeds $500.00; or . . . .

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Summary of Facts

This § 1983 abuse of process claim under amendments independent of the Fourth case arises out of the use of Georgia's criminal damage to property statute, with an element of intentional damage, O.C.G.A. § 16-7-23(a)(1) that was used to cause an arrest, independent of arguable/probable cause, to detain Petitioner Jordan, to extort a tender of bail in cash, that the Defendant-Respondents Deputy Mosley and Sheriff Kile used to resolve a disputed debt between Deputy Mosley, Jordan, and Sheppard, a constituent of the Sheriff, without any trial. According to Mr. Jordan, he had been asked to use the backhoe by the deputy's wife, Diane, who is Jordan's niece. Evidence from the owner, available at the time of arrest showed, that the damage could have been the result of normal wear and tear.

By warrant, Jordan was jailed without investigation, to "get him back down here to talk to him," (R.6-40-9) because negotiations broke down. The Sheriff set the amount with fines and fees like when "they're found guilty," (R.5-39-14 & 15) and the Sheriff demanded "bail" in cash, which was tendered,

and without trial, some of the money was paid to Sheppard, and some retained by the department, and Jordan was released.

Detailed Background

Defendant Tommy Mosley is the Chief Jailor for the Screven County Sheriff, Defendant Sheriff Mike Kile. R.5-39-5; R.4-38-5. He is married to Diane Mosley. R.8-42-5. Sheppard, a contractor doing work at the Mosley's, had rented a backhoe to the Mosley's. R.1-14-2 para. 5. R.1-15-4.

For years Diane Mosley had been asking her uncle, Isaiah Jordan, to dig out the Mosley's fish pond, (R.3-37-18 & 19) because Mr. Jordan was a retired heavy equipment instructor for the Army. R.9-43-22 & 23; R.3-37-17.

Around July 23, 2002, (R.10-44-Ex. 29) the Jordans, who live in Richmond County, Georgia (R.2-43-6) visited the Mosleys in Screven County. R.8-42-7.

The inferences support the conclusion that at the time of arrest, or when the warrant was issued, that officer Mosley knew his designee, his wife, had caused Plaintiff to use the backhoe, which broke, which led to the arrest.

As renters, the Mosleys had authority for normal use, and Diane Mosley asked Jordan to use

the backhoe, (R.9-43-22) and there was no evidence that normal use was restricted, or that only the renters could use the backhoe. Inferences suggest the Mosley's intended to have Mr. Jordan use the backhoe and also suggest Sheppard knew someone other than the Mosleys would use the backhoe.

The evening before, Sheppard left the small backhoe at the property with the keys in it, ready for use. R.4-38-13.

Tommy Mosley claimed that it was "more [his] conversation" to get Isaiah to dig the pond than Diane's, reflecting that Mosley knew or should have known that his wife had asked Jordan to use the equipment, if not just for her, but for him. R.4-38-8. Sheriff Kile indicated that Deputy Mosley told him the day of the incident, that Mosley's wife, Diane, had asked Jordan to use the backhoe. R.5-39-10.

Diane Mosley denies she asked Jordan to use the backhoe and says that Jordan was drunk and used it on his own. R.8-42-7.

While Jordan was using the trencher it broke. R.9-43-27. Jordan put it back as directed by Diane. R.9-43-28. R.3-37-22.

Tommy was at work. R.4-38-11.

The Sheriff's plan was not to investigate this civil dispute about who should pay Sheppard because the rented backhoe broke.

Sheppard testified that the break could have

been caused by normal wear and tear. R.7-41-19.

Jordan testified that he did not abuse the trencher. R.9-43-25&26. There is no direct evidei of reckless use.

When Sheppard learned the loader was broken, (R.7-41-6) Sheppard's employee told him Mosley had a bad reputation about paying debts, Sheppard called Sheriff Kile to protect his interes R.7-41-7&9.

Sheriff Kile came and allegedly asked no questions, but proclaimed he "wasn't going to investigate it . . . ." R.5-39-13.

Instead the Sheriff created a plan to ensur Sheppard was paid. He told Sheppard to present bill for his losses. R.7-41-9.

No arrest warrant was taken then, which tends to prove it was a civil matter, and that Jorc had actual authority or apparent consent from Di and there was no objective particular evidence fr which intentional or reckless use could have been inferred.

The Disputed Civil Debt Between Deputy Mosley and Jordan; Jordan's Position That He and Mosley Should Each Pay Half, and Mosley's Threats to Use His Authority to Resolve the Dispute.

At the end of July, Sheppard gave the Sheriff's office a bill totaling $1,036.04. R.10-44-Ex. 29. R.5-39-8&9.

Sheppard invoiced Mosley:

Quantity	Rate	Amount
1 parts	507.90	507.90
1 tire repair	28.14	28.14
1 labor on ditch witch	200.00	200.00
1 down time	300.00	300.00
		$1,036.34

R.2-44 - Pff.Ex.28,p. 9.

Mr. Jordan was willing to pay half because Diane Mosley was his niece and it would help her out, (R.9-43-29&30&31) but Deputy Mosley refused to pay half, insisting that Jordan pay it all, (R.9-43-29) and thus began the dispute over a civil debt.

Before the November arrest, while the Jordans were visiting Diane Mosley's mother in Florida, (R.3-37-16&21; R.9-43-16) Tommy Mosley called and told Mrs. Jordan to give Mr. Jordan the message that he, Mosley, was going to teach Jordan a lesson, demanding payment. R.3-37-27.

Mosley continued to refuse to pay half, but demanded the full amount, stating that he was going teach Jordan a lesson. R.9-43-32.

The Sheriff Caused the Warrant to Issue[1] In Disregard of Finding or Disclosing - with Direct Evidence That the Warrant Was Issued to Detain Jordan to "Talk" to Him about the Disputed Debt.

Shortly before Sheriff Kile and Mosley caused Deputy Crockett to take out the arrest warrant, the Sheriff had a chance meeting with Sheppard. The Sheriff asked Sheppard if he had received his money yet, and Sheppard said no, and Sheppard described Kile's reaction as "steamed" that he had not been

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[1] Even though the evidence shows that the Sheriff was more of the cause for the warrant to issue than Mosley, the District Court found there was insufficient evidence to "make the reasonable inference that defendant Mike Kile "instigated" Jordan's arrest." App. 46. This is a jury question and is a fairly included question, tied to the Sheriff's plan to use arrest, detention and the bail process to extort cash, and add fees and fines, and take it without trial.

The District Court concluded there was not enough evidence, because "Kile had no personal stake in the matter." App. 47.

Factually this is incorrect because the Sheriff was keeping his constituent Sheppard, and Chief Jailer Mosley, happy at the cost of equal protection of Jordan from Richmond County.

Legally this should not matter in a claim under § 1983, which is a causation statute, where liability attaches for "subject[ing], or caus[ing] to be subjected."

paid. R.7-41-13.

On about November 15, 2002, after Kile learned that Sheppard had not been paid according to his plan (R.7-41-13) he took the first step to collect the money for his Screven County constituents, Sheppard and Chief Jailer Mosley, by causing another Deputy to swear out the warrant. R.7-41-13; R.10-44-Ex. Crockett, 3.

Kile and Mosley, caused the warrant to issue, to "bring" Jordan "down here", so "they" could "to talk to him," according to Deputy Crockett. R.6-40-9. Deputy Crockett stated: "It's my knowledge that they were trying to work everything out and Mr. Jordan just wouldn't cooperate and a warrant was issued for his arrest to get him back down here to talk to him, and before I talked to him they'd already settled and he'd bonded out." R.6-40-9.

That Crockett was a cat's paw through whom the officers could pass their information as fellow credible officers, and not be the officer who took out the warrant, the court noted, "in what was surely not an accident" that Crockett and not Mosley or Kile, swore out the warrant. App. 44.

Crockett admits he did no investigation. R.6-40-6.

Because Mosley and Crockett virtually had no interaction about this matter, this supports the conclusion that the Sheriff was a proximate cause

that the warrant was issued. The first time Crockett asked Mosley about the incident, "was a few minutes" before his deposition on July 18, 2005. R.6-40-7&8. Mosley signed the incident report. (R.6-40-8).

The warrant was perfunctory, reflecting it was created as a ticket for Jordan's train ride to get bail tendered in cash. R.10-44-Ex. 3. The warrant has no particularity as to how the damage could have been caused, beyond intentional, consented to, normal use, as factual detail or support for the statutory "intentional" language.[2] The District Court relied on *Malley v. Briggs*, 475 U.S. 335 (1985) to conclude that Mosley could not demonstrate evidence with particularity as to proof of intention - and that he never "pretend[ed] to have believed that Jordan did so." App. 42.

The warrant alleged: "Isaiah Jordan did intentionally damage the property of Johnny Sheppard to-wit: a backhoe, without his consent and the damage there to exceeds $500."[3] R.2-44-Pff. Ex.

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[2] The lack of particularity could be attributed to Mosley, Kile, and Crockett intentionally refusing to investigate evidence likely to be exculpatory, based on objective evidence known at the time.

[3] According to Crockett this was a felony and therefore the case should have presented to a grand jury, under the Fifth

27, p. 4.

The warrant has no information as to how the machine was damaged intentionally, in derogation of the particularity clause. The focus of the warrant language, presented to the Magistrate, to provide criminal intent, is on lack of consent. If disputed facts were resolved that Mosley knew his wife gave consent, Mosley withheld material information and Kile admits Mosley told him Diane gave consent the day of the incident or shortly thereafter.[4] "I believe he mentioned it . . . ." R.5-39-10-16.

The Sheriff's Direct Involvement
as the Sheriff, after Arrest,
in the Execution of the Plan
to Convert Bail into Cash, Proves
Causation by Sheriff
and
Proof of His Involvement.

Sheriff Kile caused a "pick up order" to be sent to Richmond County Sheriff's Department, which

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Amendment, before punishment and taking of fines and fees.

[4] The District Court noted *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978) provides a second basis for finding that Jordan has raised an issue of fact as to a violation of the Fourth Amendment. App. 43.

caused a Richmond County Deputy to arrest Plaintiff Jordan on December 16, 2002. R.9-43-39; Pl. Ex. 5; Def. Ex. D-2 & D-3.

Then, on Sheriff's letterhead Kile sent a FAX to the Richmond County Sheriff's Department, instructing officials to act as his agent, to collect $1,036.04 from Jordan, and if they collected, they could release him. R.5-39-9; R.10-44-28 p. 3 & 4.

The Extortion Using the Bail Process.

Mrs. Jordan was under the impression she could post a land bond to get Mr. Jordan out of jail pending trial. R.3-37-39&40.

On December 17, 2002, Dorothy Jordan contacted the Screven County jail and spoke to Tommy Mosley, (R.3-37-43 & 44; 48 & 49) asking Mosley how much the bond would be, and when Mr. Jordan would be transferred. R.3-37-46. Mosley told Dorothy Jordan that they were busy and they would pick up her husband when they had time. R. 3-37-43. This shows detention was prolonged as a whip to get the cash.

Dorothy asked Mosley if he was deliberately delaying the pick up of Isaiah Jordan, because she could not post bond for Jordan until he reached Screven County Jail. R.3-37-54. Mosley told her that when he got a chance, he would send someone to

pick up Mr. Jordan. R.3-37-53 & 54.

In a second conversation Mrs. Jordan asked Mosley about bond and Mosley said he did not know how much it would be, (R.3-37-46) reflecting the Sheriff's involvement.

On December 18, 2002, Dorothy Jordan contacted them about the bond amount, and again she told Mosley she wanted to post a property bond, but Mosley told her that he would have to get approval from Sheriff Kile. R.3-37-46 & 47. Deputy Mosley, told Mrs. Jordan that his boss, the Sheriff, would not let her post a land bond, and that she would have to pay with a cashier's check or cash. R.3-37-47.

Kile admitted he gave Mosley the figures used to establish the cash bond amount. R.5-39-13.

Further, as to the wholesale deprivation of post-arrest protections, Deputy Mosley told Mrs. Jordan to tell Mr. Jordan that there would be no court, that she would bond him out, and that was it. R.3-37-47.

On December 18, 2002, Plaintiff Dorothy Jordan obtained a cashier's check for $1,355.06 made out to the Sheriff's Department. R.3-37-52; Cashier's Check, R.10-44-Ex. 28.

On December 19, 2002, after Jordan's transfer to the Screven County Jail, (R.9-43-55&58) Mosley went to the cell where Jordan was detained and

asked him if he was "making arrangements to pay [his] fine." R.9-43-60. Jordan told him that he hoped his wife was taking it to court, but Mosley told him there would "be no court." R.9-43-61.

On December 19, 2002, Mrs. Jordan and her daughter drove to the Screven County jail. R. 3-37-53. Once there, Defendant Mosley obtained Jordan's file. R. 3-37-57. Mrs. Jordan asked Mosley about the criminal charges. R. 3-37-46. Mosley refused, (R. 3-37-57) telling her she would get nothing but a receipt. R. 3-37-57 & 58. R.10-44-Ex. 28.

In addition to what Sheppard said was owed to him, the $1,036.04 fine or damages (backhoe), which included "lost time," the "bond" amount included additional charges: $144.00 drop warrant fee; $45.00 service fee; and $130.00 pick up fee. Mosley signed the receipt. R.10-44-Ex. 28.

The Sheriff testified he added the $144 as the standard cost to withdraw the warrant, and that it had been a standard for fifteen (15) years. R.5-39-14.

The Sheriff added the pick up fee because, "[I]f they go to court, then the judge usually includes it in the fine if they're found guilty." R.5-39-14 & 15.

The Sheriff tried, convicted, and fined Jordan.

According to Kile, because the service fee was for services provided by Richmond County, Richmond County should have been paid the fee. Kile admitted that, therefore, in either Richmond or Screven

County records, there should be proof of the payment or refund to Richmond County. R.5-39-14. A search of the records of Richmond County reflected that the payment for the "service fee" had not been made by Screven County. R.1-25-Ex. A1-A3 ¶5.

Mosley delivered Sheppard a check in the amount of $1,036.04. R.7-41-11; R.10-44-Ex. 29.

Some time after Mr. Jordan's release, the Jordans went back to Sheriff Kiie and asked him to right the wrong, but he did not, and he disavowed his own involvement and directed them to sue Mosley. R.3-37-42-45, 58, 63-65, 7-71; R.2-39-16-18.

II. DECISIONS AND PROCEEDINGS BELOW

1. Complaint App. G, 63-87.

The complaint recognized at least two separate deprivations of rights as to, cognizable processes or stages of the criminal process.

The first challenged the initial arrest as "unreasonable without probable cause in violation of the Fourth Amendment...[asserting][n]o reasonable officer would have caused [Mr.] Jordan to be arrested under the objective evidence present." App. 77 & 78; Claim I. Objective evidence at the time of arrest includes the actual knowledge of this officer from his acts, or those acts of his wife of which he knew or

should have known, which were wrongly withheld from the warrant, had he been an objective officer conducting a reasonable investigation into consent and the cause of damage, and known what Mosley knew caused Jordan to use the backhoe.

The second cause of action, for which certiorari is sought, is based on the wholesale deprivation of post-arrest, substantive and procedural protections after arrest, before and including public criminal and civil jury trials that should have been provided before the Defendants imposed deprivations of life, liberty or property interests. The claims incorporated paragraphs above, and were pled under the First, Fifth, Sixth, Seventh and Fourteenth Amendments, which are the amendments, which when provided consistently with due process and equal protection are the source amendments of the post arrest rights deprived in wholesale fashion by Defendants. App. 78 & 79; Claims II, III & IV.

The complaint is pled with the apparent understanding that when pleading a deprivation of constitutional rights, one should follow the pleading guidance of *Albright v. Oliver*, 510 U.S. 266 (1994) and *Graham v. Connor*, 109 S.Ct. 1865 (1989), and point to the right or rights deprived and the related amendment or amendments.

The detailed facts of the complaint showed the abuse of process and how the Defendants made Mrs.

Jordan pay in cashier's check, (App. 69-71) and that when tendered Mrs. Jordan received a receipt, (App. 84) but that there would be no trial. App. 71 ¶ 43.

The complaint pled loss of freedom, injury to reputation and monetary loss, (App. 76 ¶ 73) prolonging of detention, (App. 76 ¶ 74) deprivation of contact with family (App. 77 ¶ 76) and financial loss to Dorothy Jordan, who tendered the bail. App. 77 ¶ 78.

2. Defendant's Summary Judgment Motion; Plaintiffs' Response; and the District Court's Initial Order That Denied Summary Judgment on the Fourth Amendment Claim, But Refused to Recognize the Abuse of Process Claim. App. F-34.

When the Defendants moved for summary judgment, they did not assert that the facts and evidence did not state an abuse of process claim under § 1983 as to the source amendments. Nor did they argue that the asserted wholesale deprivation of the rights pled under the First, Fifth, Sixth, and Seventh were not fundamental rights.

In their Brief Defendant argued:

...Sheriff Kile is entitled to summary

judgment...[under the] Eleventh Amendment...on all claims...since Plaintiffs have...no evidence that Sheriff Kile was personally involved in any...unlawful conduct [and there is no] evidence of a practice, policy, or custom....[and] Defendants are entitled to...qualified immunity.

...Defendants are entitled to summary judgment on Plaintiff' Fourth Amendment claim...however, the evidence clearly demonstrates that a valid warrant for the arrest of Isaiah Jordan was issued by a magistrate judge. It is a fundamental principle of constitutional law that no Fourth Amendment violation has occurred where an arrest was carried out pursuant to a valid warrant.

Plaintiffs...Fifth Amendment...claim alleg[es] Defendants...extorted money from the Plaintiffs. In making this claim, Plaintiffs rely upon the due process clause of the Fifth Amendment...and have also made a Fourteenth Amendment due process claim. Defendants...are entitled to summary

> judgment on these due process claims for three reasons. First...the Fifth Amendment's due process clause...applies to the federal – not state– government. Second, [as to] the alleged "extortion" ...[claim it] is barred because Plaintiff failed to exhaust state law remedies, e.g., a state law conversion suit....[F]inally, Defendants are entitled to summary judgment on any substantive due process claim arising out of Isaiah Jordan's arrest. In this regard, the Fourth Amendment provides a more relevant and explicit constitutional standard. Therefore, it – and not the more hazy Fourteenth Amendment– controls.
>
> Perhaps the easiest of Plaintiff's claims of which to dispose are the First, Sixth, and Seventh Amendment claims. Plaintiffs have done little more than make vague allegations regarding these claims and have come forward with no evidence to support them.

R.1-15-2 & 3.

The following is Plaintiff's response showing the abuse of process claim is independent of the

Fourth and is tied to the Fourteenth Amendment. If it is not, the Plaintiff asked for leave to amend showing the issue is preserved.

IV. (V, VI, VII, VIII) Defendants Should Be Denied Summary Judgment on Claim II, Plaintiffs' Constitutional Abuse of Process Claim.

In section IV, Defendants' assert they should have summary judgment because the Fifth Amendment relates only to takings by the federal government of protected interests. Claim II is a claim for deprivation of life, liberty and property without due process, as a constitutional abuse of process claim. Claim III is a separate statement as to family interests, as liberty interests that were taken by the abuse of process in Claim II. Claim IV, by incorporation is also a statement of interests deprived by the abuse of process, speech in going to court under the First Amendment right to trial and to associate with and have an attorney (In *In re Primus*, 436 U.S. 412 (1978), Sixth Amendment right regarding trial, and the right to a trial by jury over the

disputed debt under the Seventh Amendment.

Even if the Fifth Amendment is not the appropriate amendment, although on its face no such exclusion appears, Plaintiffs' abuse of process claim can proceed under the Fourteenth Amendment. Under *Gilmere v. City of Atlanta*, 774 F.2d 1495 (11th Cir. 1985) (rights under the Fifth Amendment (and other amendments) are substantive federal interests that are protected as liberty interests under the Fourteenth Amendment). The abuse of process here deprived Plaintiff of substantive federal rights under the First, Fifth, Sixth, and Seventh Amendments. This argument is about total incorporation by the Fourteenth or individual incorporation.

Section VI of Defendants' argument, Defendants assert Plaintiffs have failed to exhaust and should have filed a conversion action. Plaintiffs assert that the Defendants through the state took away federally protected rights in violation of due process. The rights asserted are substantive rights.

See, Gilmere v. City of Atlanta, 774 F.2d 1495 (11th Cir. 1985). Also see above.

In Section VII, Defendants assert Plaintiffs were not engaged in any protected First Amendment activity. Plaintiffs assert that when Jordan was telling Mosley he would see him in court, Jordan was threatening to get a lawyer, which would expose Kile and Mosley, and if taken to court due process could have applied through the lawyer. *See e.g., In re Primus*, 436 U.S. 412 (1978).

In section VIII, Defendants' challenge the Sixth and Seventh Amendments as substantive rights that were deprived by the abuse of process...

[Defendants]... say they should have...judgment on the abuse of process claim because it should be brought under the Fourth Amendment. (Defs' Brf. 11-13). Plaintiffs assert the abuse of process claim should be brought under the Fourteenth Amendment. (Claim II).

The claim exists, and Plaintiffs should be allowed to amend if the court feels it should be processed under the

Fourth Amendment.

Although the Supreme Court has never specifically addressed under which amendment an abuse of process claim under § 1983 would be brought against state actors, and although the Supreme Court has never questioned specifically whether a constitutional abuse of process claim exists or specifically redefined it, one is safe in concluding that it does exist based on the discussions in *Heck v. Humphry*, 512 U.S. 477, 495, 114 S.Ct. 2364 (1994) and other cases. *See also, Wyatt v. Cole*, 504 U.S. 158, 112 S.Ct. 1827 (1992) (private defendants charged with civil rights liability for invoking state replevin garnishment and attachment statutes later declared unconstitutional, not entitled to qualified immunity, where statutes created unilateral right to seize property relating to disputed debt resolve disputed debt in favor of person acting under color of the statute); *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 73 L.E.2d 482 (1982) (private parties acting under state statute violated due process in the

seizure of property could be liable under 42 U.S.C. § 1983 as acting under color of law).

Other courts have declared that procedural due process forbids the use of legal process for a wrongful purpose. See *Torres v. Superintendent of Police*, 893 F.2d 404, 410 (1st Cir. 1990) (procedural due process violations include deprivations "of liberty by a distortion and corruption of the processes of law"). In *Cook v. Sheldon*, 41 F.3d 73, 80 (2d Cir. 1994), if Cook's "malicious abuse of process allegations are true, then, the Troopers violated his clearly established due process rights. Thus, we reject the Troopers' contention that they are entitled to qualified immunity as a matter of law. The district court properly denied summary judgment on the malicious abuse of process claim."

In *Motes v. Myers*, 810 F.2d 855 (11th Cir. 1987), the Eleventh Circuit determined there was a jury question whether city officers abused a state warrant process to settle a private dispute.

> Although the Supreme Court has not addressed this question, that there must be a deprivation of a federally protected right or interest in order to assert a constitutional abuse of process claim, the facts of this case support that there has been a deprivation of federally protected liberty or property interests.
>
> Cf. RESTATEMENT (SECOND) OF TORTS §§ 682; Id. comment b ("The usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it"). *Campbell v. City of San Antonio*, 43 F.3d 973, 980 (5th Cir. 1995).

R.1-32-23-26.

Note that Plaintiff specifically asked to be able to amend if the abuse of process claim had to be pled under the Fourth. That being said, he could not anticipate that the reasonableness clause would be a shield to deprivations under the independent amendments, which cannot be overcome by pleading, leaving the other amendments nugatory.

The District Court denied the abuse of process claim stating the following:

> Jordan supports his remaining

Fourteenth Amendment allegation by concocting a so- called "constitutional abuse of process" claim. *See* doc. # 32 at 14-17, 23. Some circuits have recognized that a malicious abuse of the criminal process can amount to a procedural due process violation under the Fourteenth Amendment. *See, e.g., Cook v. Sheldon*, 41 F.3d 73, 80 (2d Cir. 1994) (citing *Jennings v. Shuman*, 567 F.2d 1213, 1220 (3d Cir. 1977)) (stating that malicious abuse of criminal process is "by definition a denial of procedural due process"); *see also Pottinger v. City of Miami*, 810 F.Supp. 1551, 1565 (S.D.Fla. 1992); *Mayer v. Wedgewood Neighborhood Coalition*, 707 F.2d 1020, 1023 (9th Cir. 1983).

However, other courts claim the statement in *Jennings* was mere dicta and refuse to recognize a new federal constitutional right. *Atiyeh v. Hairston*, 1993 WL 532976 at *6 (E.D.Pa. 12/22/93) (unpublished); *see also Landrigan v. City of Warwick*, 628 F.2d 736, 745 (1st Cir. 1980) (citing cases rejecting abuse of process as basis for section 1983 liability and choosing not

to determine existence of such a right).

This Court joins the latter courts in declining the invitation to recognize this ill-defined federal constitutional right, especially since Georgia specifically rejects claims for abuse of the criminal process. *Gillilan v. Still,* 199 Ga.App. 118, 118-19 (1991). FN6

FN6 Obviously, state law does not define the contours of constitutional protections. *Wood v. Kesler*, 323 F.3d 872, 882 (11th Cir. 2003). This Court is simply noting that it will not create a new remedy for falsely-arrested or maliciously-prosecuted Georgians when neither the Constitution nor any federal statute clearly offers such protection. The existing protections of the Fourth Amendment and state law adequately address the situation at hand.

Any such new right to be free from the "malicious abuse of the criminal process" would inevitably turn on the question that is already central to Fourth Amendment analysis: was there probable cause for the arrest? This

> Court sees no reason to recognize a broad new right that would merely duplicate the specific, clear protections of the Fourth Amendment, and the plaintiffs have not offered the Court any reason why it should. *See also Albright v. Oliver,* 510 U.S. 266, 273-74 (1994) (petitioner's claimed right to be free from prosecution without probable cause must be judged under Fourth Amendment rather than under "liberty interest" notions of substantive due process).

App. 48 & 49.

The District Court denied summary judgment to Mosley on the Fourth Amendment claim (Claim I App. 77) in a manner of a "shock's the conscience" abuse of process.

It found that Mosley had caused Crockett to issue a warrant with no particular information to show intentional damage, (App. 42) therefore no probable cause, therefore no reasonable officer would have sworn out the warrant. App. 42 & 43. "Whether Mosley or Crockett even had any reason to believe Jordan had damaged the backhoe intentionally, and – amazingly neither of them even pretends to have believed so." App. 42.

The District Court went after lack of particularity in the warrant. "See [cits omitted] Doc # 15 exh. A (Crockett's affidavit for warrant tracking the language of the statute without supporting facts)." App. 43.

The court stated a Fourth Amendment claim existed:

> Here, Jordan has demonstrated facts to show that defendant Tommy Mosley may be liable to him for a § 1983-based false arrest. First, no probable cause existed to support Jordan's arrest. *See supra* Part III.B. Second, evidence supports the reasonable inference that Mosley may have instigated Jordan's arrest, and that he did so "with malice." [FN5 omitted.] Several of Mosley's statements -- not to mention the entire context of this case -- demonstrate that Mosley may have instigated Jordan's arrest out of personal spite rather than in an effort to apply state law. *See* doc. # 43 at 31 (Mosley demanded full payment from Jordan to "teach [him] a lesson"); doc. # at 60-61 (Mosley told Jordan he could not go to court to

challenge debt); doc. # 38 at 26-28 (Mosley explains how he sought warrant for Jordan's arrest after Jordan failed to meet Mosley's demand for payment).

Third, it is clear that Crockett did not exercise his "independent judgment" in seeking the warrant for Jordan's arrest. Crockett admits that he did not investigate the incident at all and relied exclusively on Mosley's account. Doc. # 40 at 6-8. Crockett also admits that Mosley directed him to seek the warrant on Jordan because Jordan "just wouldn't cooperate, [so] a warrant was issued for his arrest to get him back down here to talk to him ...." *Id.* at 9. No state's criminal laws may be used to resolve private economic disputes.[emphasis added] Jordan has raised a question of fact as to each element of his § 1983 Fourth Amendment/false arrest claim as to defendant *Tommy Mosley*, so this Court denies Mosley summary judgment as to that claim.

App. 45 & 46.

The District's opinion could be construed to be

a finding that an abuse of process claim under the Fourteenth Amendment, under a shocks the conscience standard, is viable, as in *Belcher v. Norton*, 497 F.3d 742, 750-55 (7th Cir 2007).

The District Court granted summary judgment to the Sheriff, weighing the evidence and finding there was insufficient evidence that he could have caused the arrest. App. 46. This decision is challenged as a fairly included question and the evidence supports reversal.

3. Qualified Immunity Appeal and the Published Decision (App. E, App.19)

Even though the District Court's opinion was a particularity decision, and there were disputed facts, the Eleventh Circuit required the parties to brief jurisdiction. The panel ruled it had jurisdiction, letting the immunity question proceed.

As to immunity, the panel, after discussing cases about inferring intent from general damages, stated:[5]

---

[5] The court noted that the Mosleys did not own the backhoe. The evidence is clear that the Mosleys rented the backhoe from Sheppard, (App. 30) so they had the right to possess, and to direct use and there was no evidence of

> The Mosleys did not own the backhoe, and Plaintiff does not contend he thought they did. Assuming arguendo that Deputy Mosley knew his wife asked Plaintiff to use the backhoe, we are not convinced -- and we need not decide -- that what must be seen as some kind of apparent-authority defense would have provided Plaintiff with a complete defense to the pertinent [F.3d 1357] crime under Georgia law. Under the law of probable cause, no police officer had a duty to resolve this legal question before seeking out Plaintiff's arrest. See Pickens v. Hollowell, 59 F.3d 1203, 1207 (11th Cir. 1995) (deciding that police officers have no responsibility to determine the viability of a statute of limitations defense when executing a valid arrest warrant). We conclude that an objectively reasonable officer in Deputy Mosley's position could have believed that Plaintiff violated the pertinent statute, even if Diane Mosley consented to Plaintiff's use of the

---

estriction on that right from Sheppard.

contractor's backhoe. FN7

FN7 Plaintiff also suggests that probable cause is undermined by Deputy Mosley's improper motive of using the criminal process to collect a civil debt. But Fourth Amendment probable cause is a purely objective determination; the specific officer's subjective intent cannot be considered. Craig v. Singletary, 127 F.3d 1030, 1042 (11th Cir. 1997).

Therefore, the district court erred in denying summary judgment in favor of Deputy Mosley on Plaintiff's Fourth Amendment claim.

App. 30 & 31.

This ruling measures the tester qualified immunity officer from a perspective erroneously limited to a snapshot of the event of the Jordan on the backhoe, without factoring in Mosley's complicity, or that of his designee, in causing Jordan to use the backhoe. This opinion also ignored the other actual knowledge of Mosley, that more probably than not, there are no particular facts to which Mosley can point to show intentional damage.

That an officer who is dropped on to the scene after the break down "could have" inferred intent does not pass the particularity requirement, in light of the assumed consent, and ignores disputed facts about withholding exculpatory evidence, and the plan whether arrest is the first step to collect through detention and bond.

This opinion upsets the landscape of consented use of property, through formal rented and lease contracts, or informal and implied in law consent, where consent decriminalizes normal wear and tear, and requires particular evidence of intentional or reckless damage. The renter can now be arrested for mere damage and the fact that intent "could have" been inferred.

4. The District Court's Post Qualified Immunity Order (App. D, App. 13)

The District had to grant judgment on the Fourth amendment claim, so it granted judgment as to all federal claims.

5. The Appeal as to the Existence and Viability of a Claim for Wholesale Deprivation of Rights under Amendments Independent of the Fourth and Whether Such a Claim

> Had to Be Pled and Determined Under Fourth Amendment Considerations. App. C, App. 5.

In a reading of the complaint that was suited to shoe-horning the abuse of process claim into a Fourth amendment construct, the Eleventh Circuit panel said the abuse of process claim was premised on arrest, versus on the amendments actually pled. App. 10.

The reasoning of the court, in light of the importance of protecting and defending the existence and independence of the other constitutional amendments, is weak – as if there might be a strong argument for negating the existence and independence of other amendments. App. 10.

The following passage reflects that the court's rational for applying the Fourth amendment to overrule the First, Fifth, Sixth, and Seventh amendments is because the claim involves a "matter of pretrial deprivation," (App. 10) and because it involves "substantive due process."

> We discern no error in the district court's refusal to recognize Jordan's ill-defined constitutional abuse of process claim. In his complaint, Jordan premised his claims on his alleged

unlawful arrest: all of his allegations flowed from this arrest. Under the logic of Graham and Albright, the district court correctly determined that Jordan's claims should be analyzed under the Fourth Amendment, not the Due Process Clause of the Fourteenth Amendment. See id. (explaining that "the Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it").

While we have recognized that malicious prosecution can rise to a constitutional tort cognizable under section 1983, we also have recognized that, in the light of Albright, it is an independent cause of action that potentially is cognizable under the Fourth Amendment. See Uboh v. Reno, 141 F.3d 1000, 1002-03 n.4 (11th Cir. 1998) (if malicious prosecution or abuse of process is committed by state actors and results in the arrest or other seizure of defendant, the defendant's only remedy is under the Fourth Amendment) (citing Smart v. Bd. of Trustees, 34 F.3d 432 (7th Cir. 1994)).

So, even if abuse of process could be a cognizable tort under section 1983, proper analysis would be under the Fourth Amendment. As we previously determined, no Fourth Amendment violation occurred here because probable cause existed for Jordan's arrest.

Jordan faults the district court for analyzing his First, Sixth, and Seventh Amendment claims separately instead of as part of his larger abuse of process claim.FN5

FN5 Jordan also cites the Fifth Amendment; but as the district court correctly determined, the Fifth Amendment applies only to Federal, not state, acts. See Knoetze v. U.S. Dep't of State, 634 F.2d 207, 211 (5th Cir. 1981) (Fifth Amendment protection extends to all persons within the United States, but attaches only when the federal government seeks to deny a liberty or property interest).

But if a more specific constitutional provision applies, then Jordan cannot

> resort to substantive due process. See Graham, 109 S.Ct. at 1870-71. Here, he alleged violations of specific Amendments.

App. 10 & 11.

Notice that the circuit court has a hanging sentence leading to nowhere stating "here he alleged violations of specific amendments," but it did not finish the sentence and reconcile how this fact squares with their decision.

The main question presented raises the narrow but large and ominous question whether reasonable clause determinations are determinative as to any claim involving a pre-trial detention or substantive due process, even if the right deprived is found in another amendment, or other clause or right found within the Fourth Amendment, and involved deprivation of post-arrest processes that protect innocence from wrongful conviction.

REASONS TO GRANT THE WRIT

SUMMARY OF REASONS

I. Question Presented:

A. Do Fourth amendment determinations of arguable/probable cause as to the initial arrest, control the myriad of post-arrest substantive and procedural protections of the amendments independent of the Fourth? The writ should be granted:

1. To reaffirm the existence, independence and substantive procedural fundamental protections of the of the amendments independent of the Fourth.

The First, Fifth, Sixth, Seventh and Fourteenth amendments, which when provided consistently with the due process and equal protection, are the source of a myriad of substantive and procedural protections, to the person charged with a crime, whether released on bail or not, before life, liberty and property interests may be deprived as a matter of punishment.

The fundamental rights necessary to create a system of substantive and procedural protections that, after arrest, protect the presumption of

innocence through the presentation of evidence to a jury, by opposing parties who seek to prove a present truth about a past event, beyond a reasonable doubt in criminal matters, involves a systems of protection that must be independent from the system that makes a decisions about arguable/probable cause at the time of the arrest or warrant.

Even if other reasons are used, this reason is paramount and worthy of highlighting if certiorari is granted.

It is inconsistent with the existence, independence, and the post arrest substantive and procedural protections of the First, Fifth, Sixth, Seventh and Fourteenth amendments, and the purpose of the Congressionally provided means to remedy deprivation of any federal right under § 1983, to use the reasonableness clause of the Fourth amendment, and findings of arguable/probable cause as to the initial arrest, as determinative of claims alleging an abuse of process by the deprivation of one, or a wholesale deprivation of multiple, fundamental post arrest rights, where the claim pled the amendments independent of the Fourth, which when provided consistently with due process and equal protection are the source amendments of the rights alleged to have been deprived.

2. To reaffirm the straight forward

application of the Congressionally provided method to provide remedy under § 1983 for deprivation of "any" Constitutional right.

Congress recognized that without enforcement there are no rights.

For a prolonged period Congress has continued to recognize that even though there is a Fifth amendment, fundamental rights of due process and equal protection were being and continue to be denied, and therefore passed the Thirteenth and Fourteenth amendments to give effect to all amendments.

Congress created a method to remedy deprivations of "any" federally protected right under § 1983.

Where a state will not provide protections to fundamental rights, and in fact intentionally deprives one of those protections, it is efficient and effective to have private parties assert the Congressionally provided remedy to protect those rights during and after deprivation.

This case gives the Court a chance to clear the record about the historically troubling stigma attached to substantive due process, given the more precise construct of protection under § 1983 and a fair, practical reading of *Albright* and *Graham*.

3. There is a split in the circuits as to the viability of abuse of process claims, even though this Court has implicitly recognized their viability as a premise of other issues having been addressed.

One is safe in concluding that with proper evidence of deprivations of interest independent of the Fourth, that an "abuse or process" claim under § 1983 does exist based on the discussions in *Heck v. Humphry*, 512 U.S. 477, 495, 114 S.Ct. 2364 (1994) and other cases. *See also, Wyatt v. Cole*, 504 U.S. 158, 112 S.Ct. 1827 (1992) (private defendants charged with civil rights liability for invoking state replevin garnishment and attachment statutes later declared unconstitutional, not entitled to qualified immunity); *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 73 L.E.2d 482 (1982) (private parties acting under state statute violated due process in the seizure of property could be liable under 42 U.S.C. § 1983 as acting under color of law).

In *Belcher v. Norton*, 497 F.3d 742, 750-754 (7th Cir 2007), although the claim did have a Fourth amendment claim, it also had a "procedural and substantive due process claim" which the circuit court remanded to the district court so plaintiff could offer proof that would distinguish separate Fourteenth liberty interests deprived from those that are "part and parcel" of a Fourth amendment claim.

Id. at 754.

In the district court Plaintiff proffered the following cases in which a claim was given the abuse of process name and was allowed to proceed. See 25, 27, 29, infra. *Torres v. Superintendent of Police*, 893 F.2d 404, 410 (1st Cir. 1990) (procedural due process violations include deprivations "of liberty by a distortion and corruption of the processes of law"); *Cook v. Sheldon*, 41 F.3d 73, 80 (2d Cir. 1994)("malicious abuse of process allegations" which if true caused rejection of qualified immunity)(citing *Jennings v. Shuman*, 567 F.2d 1213, 1220 (3d Cir. 1977) (stating that malicious abuse of criminal process is "by definition a denial of procedural due process"); note, *Gilmere v. City of Atlanta*, 774 F.2d 1495 (11th Cir. 1985); *Motes v. Myers*, 810 F.2d 855 (11th Cir. 1987)(jury question whether city officers abused a state warrant process to settle a private dispute); *Mayer v. Wedgewood Neighborhood Coalition*, 707 F.2d 1020, 1023 (9th Cir. 1983); *Pottinger v. City of Miami*, 810 F.Supp. 1551, 1565 (S.D.Fla. 1992).

The district court cited the following cases rejecting abuse of process claims, and also see the text thereof infra at 29, 30. *Atiyeh v. Hairston*, 1993 WL 532976 at *6 (E.D.Pa. 12/22/93) (unpublished); *see also Landrigan v. City of Warwick*, 628 F.2d 736, 745 (1st Cir. 1980) (citing cases rejecting abuse of

process as basis for section 1983 liability and choosing not to determine existence of such a right).

The District's opinion could be construed to be a favorable finding of an abuse of process claim under the Fourth Amendment under a shocks the conscience standard as in *Belcher v. Norton*, 497 F.3d 742 (7th Cir 2007).

4. This case gives the Court an opportunity to address abuse of process claims on a clean factual record with a shocking legal outcome if the reasoning and result are not reversed.

5. Disabuse the legal world of the notion that *Albright* and *Graham* can be used as a shield to the deprivation of post-arrest rights under the other amendments independent of the Fourth and reestablish the cases as providing practical pleading guidelines of constitutional deprivations.

Just because a case involves "matters of pre-trial deprivation" does not mean that processes and protections independent of the Fourth must be subsumed by arguable/ probable cause as to the initial arrest.

Just because a case involves "substantive due process" does not mean it can be shoe-horned into a shoe constructed with Fourth amendment design,

and still protect independent fundamental liberties.

This case gives the Court an opportunity to brush off some of the stigma attached to substantive due process and implement the

B. A fairly included question: Whether summary judgment in favor of the Sheriff should be reversed because the district court erroneously weighed the evidence as to causation.

This is a fairly included question because the abuse or process claim of post-arrest rights, from discovery through a public trial, began with the arrest.

If certiorari is granted it will give the Court the opportunity dip its feet in the problematic waters of pre-textual arrests and arrest where an officer's illegal actions cause reaction that leads to arrest, as well as intentional entrapment cases, applying *Albright* and *Graham* as a practical guide to such claims.

The Court's grant of summary judgment to the Sheriff did not find probable cause for the arrest, nor grant qualified immunity as to the arrest, and was a fact-based ruling.

C. A fairly included question: Does Mrs. Jordan have standing to assert losses of liberty and

property under the abuse of process claim?

As to the bail money, Mrs. Jordan's property interest is clear.

Mrs. Jordan's position as to the legal question is identical to Mr. Jordan's.

Mrs. Jordan's liberty and fundamental interest claims were dismissed out of hand under the Fourth Amendment reasoning. App. 49-50.

It is important to protect these rights so free citizens and family, who can muster resources for declaratory and injunctive relief, to enforce the right to release of persons for whom bail has been tendered, are able to bring independent action to force release, rather than the slow process of the detainee bringing a Habeas Corpus, at a critical time in the defense of the arrested person's liberty.

The person detained may not even be aware bail has been tendered, and used for abusive purposes, therefore even though this question is posed as fairly included, it supports granting the main question.

Respectfully submitted this 26th day of May, 2009.

John P. Batson
Counsel for Petitioners
Ga. Bar No. 042150
Member, U.S. Supreme
Court Bar

Prepared by:

John P. Batson
303 Tenth Street
Augusta, GA 30901

Phone 706-737-4040
FAX 706-736-3391
jpbatson@aol.com

APPENDIX

Supreme Court, U.S.
FILED
081474 MAY 26 2009
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

ISAIAH JORDAN AND DOROTHY JORDAN

v.

TOMMY MOSLEY AND MIKE KILE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX FOR WRIT OF CERTIORARI

JOHN P. BATSON
303 Tenth Street
Augusta, GA 30901
Phone: (706) 737-4040
Counsel of Record
Attorney for Petitioner

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App. 1

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 25, 2009

Mr. John P. Batson
303 Tenth Street
Augusta, GA 30901

Re: Isaiah Jordan and Dorothy Jordan
v. Tommy Mosley
Application No. 08A843

Dear Mr. Batson:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on March, 25, 2009 extended the time to and including May 24, 2009.

This letter has been sent to those designated on the attached notification list.

Sincerly,

William K. Suter, Clerk
by
Gail Johnson
Case Analyst

App. 3

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-15526-CC

ISAIAH JORDAN,
DOROTHY JORDAN,

Plaintiff-Appellees,

versus

TOMMY MOSLEY, individually and in his official capacity as an officer of the Screven County Sheriff's Department,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Georgia

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 15, 2009
THOMAS K. KAHN
CLERK

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

Before: EDMONDSON, Chief Judge, TJOFLAT and BLACK, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ J.L. Edmondson
Chief Judge

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-15526

Non-Argument Calendar

D.C. Docket No. 04-00150-CV-BAE-6

ISAIAH JORDAN,
DOROTHY JORDAN,

Plaintiff-Appellants,

versus

TOMMY MOSLEY, individually and in his official capacity as an officer of the Screven County Sheriff's Department,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(August 28, 2008)

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUG 28, 2008
THOMAS K. KAHN
CLERK

Before EDMONDSON, Chief Judge, TJOFLAT and BLACK, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Isaiah Jordan appeals the district court's grant of summary judgment in favor of Defendants Tommy Mosley, chief jailer at the Screven County Sheriff's Department, and Mike Kile, Screven County Sheriff, on his 42 U.S.C. § 1983 claims. No reversible error has been shown; we affirm.

This case was before us in a previous interlocutory appeal by Mosley on the denial of qualified immunity. The facts about the underlying dispute are recited in our prior opinion. See Jordan v. Mosley, 487 F.3d 1350 (11th Cir. 2007). To summarize briefly, Jordan was arrested after damaging a backhoe that Mosley had rented to dig a pond on Mosley's property.[1] Jordan refused to pay for the damage to the backhoe, and Mosley urged

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[1] Mosley's wife is Jordan's niece. The Jordans were visiting their niece when the incident happened.

another deputy at the Screven County Sheriff's Department to take out a warrant for Jordan's arrest. The warrant alleged a violation of O.C.G.A. § 16-7-23(a)(1): criminal damage to property in the second degree. Jordan was arrested on the warrant in Richmond County and later transferred to the Screven County Jail. Jordan's wife posted bail for him, the amount of which included restitution for the damage caused to the backhoe and other fees. The charges were dropped, and Jordan was released.

Jordan filed a section 1983 complaint, raising the following claims: (1) he was unreasonably seized without probable cause in violation of the Fourth Amendment; (2) Defendants extorted bail money from him and his wife, unlawfully depriving them of property in violation of the Fifth and Fourteenth Amendments; (3) Defendants caused him and his wife to be deprived of familial relationships without due process in violation of the Fifth and Fourteenth Amendments; (4) Defendants arrested him in retaliation for Jordan's protected speech and denied him a jury trial in violation of the First, Sixth, and Seventh Amendments; (5) he was falsely arrested and maliciously prosecuted in violation of state law; and (6) Defendants maliciously used the criminal process to extort money from him by imprisoning him.[2] In response to Defendants' summary judgment

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[2] Jordan also claimed that Defendants were deliberately indifferent to his serious medical needs, but because he does not argue this claim on appeal, it is abandoned. See Denny v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001) (explaining that issues not briefed on appeal are abandoned).

motion, Jordan explained that his constitutional claim about extortion of bail subsumed his claim for First, Sixth, and Seventh Amendment violations and more properly was labeled a constitutional abuse of process claim, brought pursuant to the Due Process Clause of the Fourteenth Amendment.

The district court determined that Jordan raised a fact issue on his Fourth Amendment claim about Mosley and that Mosley was unentitled to qualified immunity. Mosley appealed and we reversed, concluding that probable cause existed for Jordan's arrest: no Fourth Amendment violation occurred, and Mosley was entitled to qualified immunity. Jordan, 487 F.3d at 1355-57. The district court granted summary judgment to Defendants on Jordan's remaining claims. In pertinent part, the district court refused to recognize a constitutional abuse of process claim under section 1983, determining that Jordan's claims stemmed from his arrest and, thus, more properly were analyzed under the Fourth Amendment. The district court determined that Jordan's malicious use of criminal process claim mirrored his constitutional abuse of process claim and also was not recognized under state law.[3]

Jordan chiefly contends on appeal that the district court erred in failing to recognize his

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[3] Defendants did not move for summary judgement on Jordan's state law claims, and the district court declined to exercise supplemental jurisdiction over these claims.

Fourteenth Amendment abuse of process claim.[4] We review a district court's grant of summary judgment de novo; and we view the evidence and all reasonable factual inferences in the light most favorable to the nonmoving party. Maniccia v. Brown, 171 F.3d 1364, 1367 (11th Cir. 1999).

The first task in a section 1983 suit is "to isolate the precise constitutional violation with which [defendant] is charged." Baker v. McCollan, 99 S.Ct. 2689, 2692 (1979). If an Amendment provides an explicit textual source of constitutional protection against the sort of conduct complained of, that Amendment -- not the more generalized notion of substantive due process under the Fourteenth Amendment -- is the guide for analyzing the claim. See Graham v. Connor, 109 S.Ct. 1865, 1870-71 (1989) (in the context of an excessive force claim). For example, in Albright v. Oliver, 114 S.Ct. 807 (1994), the Supreme Court refused to recognize a substantive due process right under the Fourteenth Amendment to be free from criminal prosecution except upon probable cause; the Court determined

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[4] Throughout this litigation, it has been difficult to discern Jordan's precise claims. We agree with the district court that Jordan employed a "scatter-shot" approach to this case, raising many claims but offering "scant" support for them, we comment the district court for sorting through all the claims. See Morro v City of Birmingham, 117 F.3d 508, 515 (11th Cir. 1997) (explaining that "[t]he use of shotgun pleadings in civil cases is a ubiquitous problem," and "it is particularly important for district courts to undertake difficult, but essential, task of attempting to narrow and define the issues before trial") (internal quotation omitted).

that such a claim must be analyzed under the Fourth Amendment. Id. at 813.

We discern no error in the district court's refusal to recognize Jordan's ill- defined constitutional abuse of process claim. In his complaint, Jordan premised his claims on his alleged unlawful arrest: all of his allegations flowed from this arrest. Under the logic of Graham and Albright, the district court correctly determined that Jordan's claims should be analyzed under the Fourth Amendment, not the Due Process Clause of the Fourteenth Amendment. See id. (explaining that "the Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it").

While we have recognized that malicious prosecution can rise to a constitutional tort cognizable under section 1983, we also have recognized that, in the light of Albright, it is an independent cause of action that potentially is cognizable under the Fourth Amendment. See Uboh v. Reno, 141 F.3d 1000, 1002-03 n.4 (11th Cir. 1998) (if malicious prosecution or abuse of process is committed by state actors and results in the arrest or other seizure of defendant, the defendant's only remedy is under the Fourth Amendment) (citing Smart v. Bd. of Trustees, 34 F.3d 432 (7th Cir. 1994)). So, even if abuse of process could be a cognizable tort under section 1983, proper analysis would be under the Fourth Amendment. As we previously determined, no Fourth Amendment violation occurred here because probable cause

existed for Jordan's arrest.

Jordan faults the district court for analyzing his First, Sixth, and Seventh Amendment claims separately instead of as part of his larger abuse of process claim.[5] But if a more specific constitutional provision applies, then Jordan cannot resort to substantive due process. See Graham, 109 S.Ct. at 1870-71. Here, he alleged violations of specific Amendments.

Jordan also argues that the district court erred in concluding that Georgia does not recognize a tort for abuse of process. But that the district court noted Georgia does not recognize an abuse of process cause of action was not determinative of the constitutional issue. And whether Georgia recognizes such a claim under state law is unimportant because, once the federal claims were litigated out of Jordan's case, the district court declined to exercise supplemental jurisdiction over Jordan's remaining state law claims. Jordan does not challenge this decision; nor do we discern error in it. See Raney v. Allstate Ins. Co., 370 F.3d 1086, 1088-89 (11th Cir. 2004) (the decision whether to exercise supplemental jurisdiction is within the discretion of the district

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[5] Jordan also cites the Fifth Amendment, but as the district court correctly determined, the Fifth Amendment applies only to Federal, not state, acts. See Knoetze v. U.S. Dep't of State, 634 F.2d 207, 211 (5th Cir. 1981) (Fifth Amendment protection extends to all persons within the United States, but attaches only when the federal government seeks to deny a liberty or property interest)

court and we have "encouraged district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial").[6]

AFFIRMED.[7]

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[6] Jordan's original claim for malicious abuse of the criminal process contained no statutory citation in his complaint; nor did he explain the basis of this claim in his response to summary judgement. Jordan argues for the first time in his reply brief that this claim is for a violation of O.C.G.A. § 17-6-1, about bailable offenses. We will not consider this claim. See United States v. Whitesell, 314 F.3d 1251, 1256 (11th Cir. 2002).

[7] We have reviewed Jordan's remaining appellate arguments and conclude that no reversible error has been shown.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

No. 604CV150

ISAIAH and DOROTHY JORDAN,

Plaintiffs,

v.

TOMMY MOSLEY, individually and in his official capacity as an officer of the Screven County Sheriff's Department,

Defendant.

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
2007 OCT 22 AM 11:06
CLERK: /s/ SIGNATURE
SO. DIST. OF GA.

ORDER

In this 42 U.S.C. § 1983 civil rights case, plaintiff Isaiah Jordan alleged that defendants Tommy Mosley and Mike Kile caused his wrongful arrest and thus violated his constitutional and state law rights. Doc. # I. The defendants moved for summary judgment. Doc. # 14. This Court granted summary judgment to Kile on all claims, then dismissed all but Claims I and VI against Mosley in both his individual and official capacities.[1] Doc. # 46 at 22, *reconsideration denied*, doc. # 51, *aff'd in part and rev 'd in part, Jordan v. Mosley*, 487 F.3d 1350, 1361 (11th Cir. 2007) (foreclosing Isaiah's federal, but not his state-law, claims against Mosley).

The case is now back in this Court on remand. Doc. # 55. Normally, when a plaintiff brings a case in federal court and pleads away his federal claims, federal supplemental jurisdiction over his remaining state law claims evaporates. *Pintando v. Miami-Dade Housing Agency*, ___ F.3d ___, 2007 WL 2768452 at * 2 (11th Cir. 9/25/07) (district court was

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[1] Isaiah's wife, Dorothy Jordan, brought an unspecified "derivative" claim, doc. # 1 at 5, but this Court dismissed her outright # 45 at 10 ("It is not enough to simply claim that one holds a 'derivative' claim without citing to any statute or case law")

divested of subject-matter jurisdiction when plaintiff

amended his complaint so as to omit federal law claim that originally gave rise to the district court's supplemental jurisdiction over plaintiff's remaining state law claims). That hasn't happened here; defendant Mosley *litigated* plaintiff's federal claims out of the case. This case thus falls within another supplemental-jurisdiction channel, as recently illuminated by *Ortega v. Brock,*

> In enacting [28 U.S.C.] § 1367, Congress clearly intended to enable federal courts to retain jurisdiction over state-law claims even after the federal claims forming the basis for the court's original jurisdiction had been dismissed, either as meritless or on other grounds: "The district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction...." 28 U.S.C. § 1367(c)(3) (emphasis added). If Congress had intended to limit supplemental jurisdiction to cases where the federal claims had merit, then dismissal under § 1367(c)(3) would be mandatory, not permissive. *See Valencia v. Lee,* 316 F.3d

> 299, 305 (2d Cir. 2003) ("In providing that a district court 'may' decline to exercise such jurisdiction, this subsection is permissive rather than mandatory."). Thus, the plain language of the supplemental jurisdiction statute makes it clear that the court does not lack subject-matter jurisdiction over a pendent-party claim simply because the federal claims forming the basis for the court's original jurisdiction lack merit.

501 F.Supp.2d 1337, 1343 (M.D.Ala. 2007). But just because there is no automatic dismissal does not mean that the case automatically stays here. Instead, the issue falls within the Court's discretion. *Flint Elec. Membership Corp. v. Whitworth*, 68 F.3d 1309, 1314 (11th Cir. 1995) ("The decision whether to dismiss a complaint still containing state law issues after all federal causes evaporate is within the district court's sound discretion"), *modified on other grounds*, 77 F.3d 1321 (11th Cir. 1996).

Even at that, the law tilts the Court *against* retaining jurisdiction. *Mergens v. Dreyfoos*, 166 F.3d 1114, 1119 (11th Cir. 1999) (in its discretion the district court may dismiss State law claims after dismissing federal claims; "[m]ore specifically ... if the federal claims are dismissed prior to trial, *[United*

Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)] strongly encourages or even requires dismissal of state claims") (quotes and cite omitted); *accord Granite State Outdoor Advertising, Inc. v. Cobb County,* GA, 193 Fed.Appx. 900, 907 (11th Cir. 2006); *Van Meter v. City of Lanett, Ala.,* ___ F.Supp 2d ___, 2007 WL 2409918 at * 5 (M.D.Ala. 8/24/07).

Isaiah, in that regard, would be protected against any statute of limitations bar in the event this Court dismisses his state law claims and he must refile in state court:

> (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C.A. § 1367(d).

The Court thus declines to exercise supplemental jurisdiction over Isaiah Jordan's state-law claims. Accordingly, his state-law claims -- and thus what remains of his case -are ***DISMISSED***

WITHOUT PREJUDICE. This case therefore is **CLOSED.**

This 22 day of October, 2007.

/s/B. Avant Edenfield
B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

App. 19

[*Jordan v. Mosley*, 487 F.3d 1350 (11th Cir. 2007)]

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-11399

D.C. Docket No. 04-00150 CV-BAE-6

ISAIAH JORDAN,
DOROTHY JORDAN,

Plaintiff-Appellees,

versus

TOMMY MOSLEY, individually and in his official capacity as an officer of the Screven County Sheriff's Department,

Defendant-Appellant

MIKE KILE, individually and in his official capacity as Sheriff of the Screven County Sheriff's Department,

Defendant.

App. 20

Appeal from the United States District Court
for the Southern District of Georgia

(June 1, 2007)

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUNE 1, 2007
THOMAS K. KAHN
CLERK

Before EDMONDSON, Chief Judge, TJOFLAT and GIBSON,* Circuit Judges.EDMONDSON, Chief Judge:

Isaiah Jordan ("Plaintiff") filed suit against his niece's husband, Tommy Mosley ("Deputy Mosley"), who is the chief jailer for Screven County and an officer in the Sheriff's Department. Plaintiff alleged -- among other things -- violations of the Fourth Amendment and of state laws prohibiting false arrest and malicious prosecution. Deputy Mosley moved for summary judgment on all claims, arguing in part that he was entitled to qualified immunity on the Fourth Amendment claim [487 F.3d 1353] and official immunity on the state law claims. The district court granted Deputy Mosley's motion in part, but denied his motion on the qualified immunity and official immunity issues. Deputy Mosley appeals. We reverse the denial of summary judgment on the Fourth Amendment claim, but we affirm the denial of summary judgment on the state law claims.

I. Background

Because this appeal comes from a summary judgment, we must view the record in the light most favorable to Plaintiff. See Priester v. City of Riviera Beach, Fla., 208 F.3d 919, 925 n. 3 (11th Cir. 2000). In

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* Honorable John R. Gibson, United States Circuit Judge for the Eighth Circuit, sitting by designation.

that light, these assertions are today's facts.[1]

In July 2002, Plaintiff and his wife visited their niece Diane Mosley at the Mosleys' home in Screven County. The Mosleys had been digging a well on their property with the help of a contractor, who kept a front-end loader -- a backhoe -- on the property. Before the visit, Diane had asked Plaintiff -- who is a heavy equipment operator -- if he would clean up the area and dig a hole for a fish pond. According to Plaintiff, Diane Mosley renewed the request during his visit. Plaintiff eventually went outside, operated the backhoe, caused a flat tire, and broke the hydraulic cylinder. Diane called Deputy Mosley -- who was at work -- to tell him about the damage, and Deputy Mosley told her to "tell [Plaintiff] to get off the equipment." Plaintiff did get off the backhoe and returned it to the place where he found it.

The next day, the contractor discovered the damage to his backhoe and discussed the matter with Deputy Mosley. For assistance, the contractor called Sheriff Kile, who advised the contractor to submit a bill for Deputy Mosley. Deputy Mosley received the bill and spoke to Plaintiff about payment. Plaintiff offered to pay half, but Deputy Mosley was insistent on the payment of the entire amount. Plaintiff paid Deputy Mosley nothing, despite Mosley's requests.

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[1] We note that the "facts" set out in this opinion – the "facts" that we must assume for the purposes of this appeal – may turn out to be different than the actual facts of this case.

Deputy Mosley later told his colleague, Deputy Crockett, that Plaintiff used the contractor's backhoe, broke it, and refused to pay for the damage. Mosley never mentioned that his wife Diane may have requested Plaintiff to use the backhoe. Deputy Mosley then pressed Deputy Crockett to take out a warrant for Plaintiff's arrest. Deputy Crockett swore out an affidavit, alleging a violation of O.C.G.A. § 16-7-23(a)(1): criminal damage to property in the second degree.[2] The affidavit said, without elaboration, that "Isaiah Jordan did intentionally damage the property of Johnny Sheppard . . . [in an amount exceeding] $500." Based on Deputy Crockett's affidavit, a magistrate judge issued the arrest warrant.

In seeking the warrant, Deputy Crockett relied entirely on Deputy Mosley's story, did not further investigate the incident, and did not learn the details until much later. Deputy Crockett acknowledged in a deposition that Plaintiff "just wouldn't cooperate [in paying back the money] and a warrant was issued for his arrest to get him back down here [to Screven County] to talk to him."

Plaintiff was arrested pursuant to the warrant in Richmond County by law enforcement [F.3d 1354] officers of that county. Then Plaintiff was transferred to the Screven County jail, where Deputy Mosley is the

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[2] A person commits the offense of criminal damage to property in the second degree when he "[i]ntentionally damages any property of another person without his consent and the damage thereto exceeds $500.00." O.C.G.A. § 16-7-23(a)(1).

chief jailer. Plaintiff's wife arrived to post bond; and Deputy Mosley told her that the charges would be dropped if she paid $1,355.06, which included restitution for damages to the backhoe and other fees. She paid that amount; Plaintiff was released; and the charges were dropped.

Plaintiff sued Deputy Mosley under 42 U.S.C. § 1983, alleging violations of federal and state law rights. Deputy Mosley moved for summary judgment on all claims, and his motion was granted in part and denied in part.

Deputy Mosley has appealed the district court's judgment. His appeal only concerns two issues: (1) whether the district court erred in denying his qualified immunity defense against Plaintiff's Fourth Amendment claim; and (2) whether the district court erred in denying his official immunity defense against Plaintiff's state law claims of false arrest and malicious prosecution.[3]

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[3] Deputy Mosley attempts to argue on appeal that he is entitled to Eleventh Amendment immunity from the claims against him in his official capacity as deputy sheriff. He did not raise this defense below, and the district court did not decide the question. Although we have decided that a sheriff was entitled to Eleventh Amendment immunity with respect to certain functions, see Manders v. Lee, 338 F.3d 1304, 1328-29 (11th Cir. 2003), we have not yet decided whether the Eleventh Amendment could provide immunity to a sheriff's deputy. We make no attempt to decide the issue today. See Bouchard Transp. Co. V. Florida Dept. of Envtl. Protection, 91 F 3d 1445, 1448 (11th Cir. 1996) (declining decide the sovereign immunity question that the district court never addressed); see also Lytle

II. Discussion

A. Fourth Amendment

We first note the obvious fact that Deputy Mosley neither arrested Plaintiff nor obtained the pertinent arrest warrant. In this Circuit, a non-arresting officer who instigates or causes an unlawful arrest can still be liable under the Fourth Amendment. Rodriguez v. Ritchey, 539 F.2d 394, 400 (5th Cir. 1976).[4]

We now turn to Deputy Mosley's argument that he -- in his personal capacity -- is entitled to qualified immunity on Plaintiff's Fourth Amendment claim. "Qualified immunity protects government officials performing discretionary functions from civil trials [ ] and from liability if their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known." Purcell ex rel. Estate of Morgan v. Toombs County, 400 F.3d 1313, 1319 (11th Cir. 2005) (alteration in original) (quoting Lassiter v. Ala. A&M Univ., Bd. of Trustees, 28 F.3d 1146, 1149 (11th Cir. 1994) (en banc)). The immunity

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v. Griffith, 240 F.3d 404, 410 (4th Cir. 2001) (declining to decide the sovereign immunity question because it was best first resolved by the district court); Roberts v. College of the Desert, 870 F.2d 1411, 1415 (9th Cir. 1988) (same).

[4] In Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent the decisions of the Fifth Circuit rendered before 1 October 1981.

protects "all but the plainly incompetent or those who knowingly violate the law." Id. (quoting McCoy v. Webster, 47 F.3d 404, 407 (11th Cir. 1995)).

Qualified immunity ordinarily involves a two-part inquiry. First, we decide whether the facts establish a violation of federal law. See Draper v. Reynolds, 369 F.3d 1270, 1274-75 (11th Cir. 2004). Second, if we decide that a violation of federal law has occurred, we must determine whether the rights violated were already [F.3d 1355] clearly established when the defendant acted. See id. at 1275.

Thus, we begin by deciding whether the facts -- which we construe favorably to Plaintiff -- show a Fourth Amendment violation. If probable cause existed for Plaintiff's arrest, the Fourth Amendment was not violated. See Wood v. Kesler, 323 F.3d 872, 878 (11th Cir. 2003).

Probable cause exists when "the facts and circumstances within the officers' knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Miller v. Harget, 458 F.3d 1251, 1259 (11th Cir. 2006) (quoting Rankin v. Evans, 133 F.3d 1425, 1435 (11th Cir. 1998)).

In the light most favorable to Plaintiff, these facts are the material facts Deputy Mosley knew: (1) at some time, Diane Mosley asked Plaintiff to use the backhoe and to clean the area behind the house; (2)

Plaintiff used the contractor's backhoe without the consent of the contractor-owner; (3) Plaintiff caused damage to the backhoe in excess of $500; and (4) Plaintiff refused to pay for the damage. Based on those facts, we conclude that an objectively reasonable officer in Mosley's place would have cause to believe that Plaintiff intentionally caused damage to the backhoe in excess of $500 without the consent of the owner, thereby committing criminal damage to property in the second degree under O.C.G.A. § 16-7-23(a)(1). In other words, probable cause existed for the arrest.

Plaintiff, however, contends that Deputy Mosley lacked probable cause to arrest Plaintiff because Deputy Mosley had no reason to believe that Plaintiff "intentionally" damaged the backhoe.

Of course, no police officer can truly know another person's subjective intent. But that Plaintiff did, in fact, damage the backhoe is undisputed. And that fact provides some evidence to believe that Plaintiff intended to damage the backhoe. See United States v. Martinez, 96 F.3d 473, 478 n.7 (11th Cir. 1996) ("[A]cts indicate the intention' is an old maxim"). Beyond that, an officer would need no further evidence of Plaintiff's intent to cause Plaintiff's arrest. No officer has a duty to prove every element of a crime before making an arrest. Scarbrough v. Myles, 245 F.3d 1299, 1302-03 (11th Cir. 2001). "Police officers are not expected to be lawyers or prosecutors." Id. at 1303 n.8.

The crime for which Plaintiff was arrested is a general intent crime. A person commits the offense defined in O.C.G.A. § 16-7-23(a)(1) when he

"intentionally damages any property of another person without his consent and the damage thereto exceeds $500.00." The only requisite intent of this crime is a general intent to do the act: damaging another person's property. Cf. Strickland v. State, 479 S.E.2d 125, 128 (Ga. Ct. App. 1996) (writing that "sexual battery requires only general intent" when that crime was defined as "intentionally mak[ing] physical contact with the intimate parts of the body of another person without the consent of that person").[5]

Plaintiff was arrested for a general intent crime, and Deputy Mosley -- or, to be more technically correct, an objectively reasonable police officer -- needed no specific evidence of intent to make the arrest. This conclusion is consistent with other courts that have addressed similar issues in the context of probable cause. The Ninth Circuit only requires probable cause on the element of intent when the crime [F.3d 1356] is a specific intent offense. Compare Gasho v. United States, 39 F.3d 1420, 1428 (9th Cir. 1994) ("[W]hen specific intent is a required element of the offense, the arresting officer must have probable cause for that element in order to reasonably believe that a crime has occurred.") with United States v. O'Reilly, No. 96-10099, 1997 WL 306425, *1 (9th Cir. June 5, 1997) (unpublished) ("If this is a crime of general intent, the officers need not have probable cause for this element [of intent]."). And the Second Circuit does not require probable cause to be established by direct evidence of a suspect's state of mind when it can be inferred from

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[5] We are not addressing specific intent crimes today.

circumstantial or indirect evidence. See Krause v. Bennett, 887 F.2d 362, 371 (2d Cir. 1989) (deciding that evidence supported a sufficient inference of knowledge for probable cause when the crime required "knowing possession of stolen property"); see also McGuire v. City of New York, 142 Fed. Appx. 1, 3 (2d Cir. 2005) (unpublished) ("[W]hen an officer has evidence that a defendant has engaged in conduct proscribed by law -- whether transporting a quantity of drugs, possessing a stolen item, or driving with a suspended license -- he has probable cause to arrest the person even without specific evidence on the elements of knowledge and intent that will have to be proved to secure a conviction at trial.").

And our own Circuit has concluded that, even for a criminal statute that requires proof of an intent to defraud for a conviction, an arresting officer does not need evidence of the intent for probable cause to arrest to exist. See United States v. Everett, 719 F.2d 1119, 1120 (11th Cir. 1983) (passing or possessing counterfeit money).[6]

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[6] Although intent must be proved for a conviction in Georgia, a person can be convicted for a general intent offense without direct evidence of intent because "general intent may be inferred from the conduct of the accused." Prine v. State, 515 S.E. 2d 425, 427 (Ga. Ct. App. 1999); Cline v. State, 405 S.E. 2d 524, 525 (Ga. Ct. App. 1991) (noting that criminal intent may be inferred from circumstances connected with the accused's crime); COUNCIL OF SUPERIOR COURT JUDGES OF GEORGIA, 2 GEORGIA SUGGESTED PATTERN JURY INSTRUCTIONS, CRIMINAL CASES 1.41.10 (2006) ("[Intent] may be inferred from the proven circumstances or by acts and conduct, or it may be, in [the jury's] discretion, inferred when it is the natural and necessary

Thus, when a police officer arrests a suspect for committing a general intent crime such as the one defined in O.C.G.A. § 16-7-23(a)(1), the officer needs no specific evidence of the suspect's intent. All that is required is probable cause to believe that the suspect did the prohibited acts. Because Deputy Mosley knew Plaintiff damaged the backhoe, we conclude that the arrest was lawful -- for Fourth Amendment purposes -- even if Deputy Mosley had no specific evidence on whether Plaintiff's act of damage was intentional.

Plaintiff also contends that he could not have committed the statutory
offense because Diane Mosley consented to Plaintiff's use of the backhoe and she had apparent authority to do so. Thus, Plaintiff argues, Deputy Mosley could not have reasonably believed Plaintiff violated the statute.

The Mosleys did not own the backhoe, and Plaintiff does not contend he thought they did. Assuming arguendo that Deputy Mosley knew his wife asked Plaintiff to use the backhoe, we are not convinced -- and we need not decide -- that what must be seen as some kind of apparent-authority defense would have provided Plaintiff with a complete defense to the pertinent [F.3d 1357] crime under Georgia law. Under the law of probable cause, no police officer had a duty to resolve this legal question before seeking out Plaintiff's arrest. See Pickens v. Hollowell, 59 F.3d

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consequence of the act.") The prosecution can indirectly prove the requisite "intent" by proving that the accused did the pertinent act. Prine, 515 S.E. 2d at 427

1203, 1207 (11th Cir. 1995) (deciding that police officers have no responsibility to determine the viability of a statute of limitations defense when executing a valid arrest warrant). We conclude that an objectively reasonable officer in Deputy Mosley's position could have believed that Plaintiff violated the pertinent statute, even if Diane Mosley consented to Plaintiff's use of the contractor's backhoe.[7]

Therefore, the district court erred in denying summary judgment in favor of Deputy Mosley on Plaintiff's Fourth Amendment claim.

B. State Law Claims

Deputy Mosley also argues that he is entitled to official immunity on Plaintiff's state law claims of false arrest and malicious prosecution. The Georgia Constitution allows state employees to be sued for performing their discretionary functions[8] only "if they act with actual malice or with actual intent to cause injury in the performance of their official functions." GA. CONST. art. I, § II, par. IX(d); Gilbert v.

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[7] Plaintiff also suggests that probable cause is undermined by Deputy Mosley's improper motive of using the criminal process to collect a civil debt. But Fourth Amendment probable cause is a purely objective determination; the specific officer's subjective intent cannot be considered Craig v. Singletary, 127 F 3d 1030, 1042 (11th Cir 1997).

[8] That Deputy Mosley was performing a discretionary function when he encouraged Deputy Crockett to obtain a warrant for Plaintiff's arrest is undisputed. See Todd v. Kelly, 535 S.E. 2d 540, 542 (Ga Ct. App. 2000).

Richardson, 452 S.E.2d 476, 483 (Ga. 1994).

Unlike qualified immunity under federal law, we must inquire into Deputy Mosley's subjective intent to determine whether he has official immunity under Georgia law. We agree with the district court that summary judgment was improper on grounds of official immunity because Plaintiff has raised a genuine issue of material fact about Deputy Mosley's intent in pursuing Plaintiff's arrest warrant.[9]

Plaintiff has offered evidence tending to show that Deputy Mosley caused Plaintiff to be arrested so that Mosley could collect a civil debt. Plaintiff testified that Deputy Mosley first demanded payment for the damage to "teach [Plaintiff] a lesson." Deputy Mosley testified that the warrant was issued because Plaintiff refused to pay for the damage to the backhoe. Deputy Crockett said the warrant was issued to get Plaintiff down to Screven County to talk about payment. Construing such evidence in the light most favorable to Plaintiff, we think a reasonable fact finder could find that Deputy Mosley acted with the deliberate intent of causing Plaintiff to be arrested to collect a civil debt: an intent to do a wrongful act -- to imprison Plaintiff unlawfully for debt -- amounting to actual malice. See GA. CONST. art. 1, § 1, par. XXIII (prohibiting imprisonment for debt); O.C.G.A. § 5-1-7-20 (defining

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[9] We do not decide whether the complaint states a claim for these alleged state torts. Cf. Anderson v. Cobb, 573 S.E. 2d 417, 419 (Ga. Ct. App. 2002) (noting that inquiry into whether official acted with actual malic is distinct from inquiry of whether official committed alleged torts).

the tort of false imprisonment as the "unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty"); Adams v. Hazelwood, 520 S.E. 2d 896, 898 (Ga. 1999) (writing that "actual malice" in the context of official immunity requires "a deliberate intention to do a wrongful act").

[F.3d 1358] Accordingly, the district court properly denied summary judgment on Plaintiff's remaining state law claims on grounds of official immunity.

III. Conclusion

On this record, we conclude that Deputy Mosley is entitled to summary judgment on Plaintiff's Fourth Amendment claim; the denial of summary judgment to Mosley on this claim is reversed. But Deputy Mosley is unentitled to official immunity on Plaintiff's state law claims. Therefore, the district court's decision is reversed in part and affirmed in part; and the case is remanded.

REVERSED in part, AFFIRMED in part, and REMANDED.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

No. 604CV150

ISAIAH and DOROTHY JORDAN,

Plaintiffs,

v.

TOMMY MOSLEY, individually and in his official capacity as an officer of the Screven County Sheriff's Department, and

MIKE KILE, individually and in his official capacity as Sheriff of the Screven County Sheriff's Department.

Defendants.

FILED
U.S. DISTRICT COURT
SAVANNAH DIVISION
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GEORGIA

ORDER

I. INTRODUCTION

In this 42 U.S.C. § 1983 civil rights case, plaintiff Isaiah Jordan alleges that defendants Tommy Mosley and Mike Kile caused his wrongful arrest in violation of his constitutional and state law rights. Doc. # 1.[1] The defendants move for summary judgment. Doc. # 14.

II. BACKGROUND

Plaintiff Isaiah Jordan is the uncle of Diane Mosley -- defendant Tommy Mosley's wife. Doc. # 31 1. In 7/02, plaintiffs Isaiah and Dorothy Jordan were at the Mosleys' home in Sylvania, Georgia. *Id.* ¶ 2. There was once a fish pond on the back portion of the Mosleys' property, but it had dried up and become filled with debris. Doc. # 42 at 6; doc. # 43 at 24-25. Prior to that visit, Diane Mosley had asked Isaiah Jordan, a retired heavy equipment operator, to clean up the-area and dig out 'a new hole for the pond. Doc.

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[1] Isaiah's wife Dorothy brings an unspecified "derivative" claim discussed *infra* Doc #1 at 5. For convenience, the Court will omit mention of her claim for most of this Order.

42 at 7. The parties dispute whether Diane Mosley renewed that request on the date in issue here. Doc. # 38 at 25-27; doc. # 43 at 22.

Coincidentally, a local water-well digger, Johnny Sheppard, had been doing work for the Mosleys and had left a backhoe on the property. Doc. # 41 at 6-7. Thus, Isaiah Jordan -- whether by request or not -- went outside and began to use Sheppard's backhoe to clean up the fish pond. Doc. # 43 at 25-27. A hydraulic cylinder on the backhoe quickly broke, so Jordan returned the equipment to the spot where Sheppard had left it. *Id.*

The next day, Sheppard discussed the damages to his backhoe with Tommy Mosley; Sheppard was unhappy with Mosley's reply, so he called defendant Mike Kile, the Screven County Sheriff. Doc. # 41 at 8. Kile came out to the Mosleys' house, spoke to Sheppard, and told him to submit a bill to Tommy Mosley. Doc. # 39 at 8, 13. According to both Mosley and Isaiah Jordan, they spoke again a few months later when Mosley came to Isaiah's home and demanded that Jordan pay him for the damage to the backhoe. Doc. # 43 at 29-33. Jordan says he offered to pay for half, but that Mosley insisted Jordan pay the entire amount because he wished to "teach [Jordan] a lesson." *Id.* at 31.

How the previous events led to Isaiah Jordan spending three nights in jail requires a few inferences. According to Johnny Sheppard, he ran into defendant Mike Kile a few months after the incident. Doc. # 41 at 13. Sheppard told Kile that he had not been paid for the damage yet, and "it kind of steamed [Kite] up a bit." *Id.* Sheppard speculates that Kile must then have "done something to get things moving." *Id.*

Tommy Mosley provides the only other clue to the developments in the case. He admits that he demanded full payment from Jordan for Sheppard's damages. Doc. # 38 at 26-28. Mosley adds: "We're talking about from July to November, that there was time that this could have been taken care of and wasn't. So then that's when the warrant [for Jordan's arrest] was sought." *Id.* at 27.

Mosley admits that he pressed W.L. Crockett, a deputy in the Screven County Sheriff's Department, to take out a warrant for Jordan's arrest sometime in November of 2002. Doc. # 38 at 19-20; doc. # 14 ¶ 11. He says Crockett knew about the events because they worked together and Mosley had told him about Jordan's failure to pay. *Id.* But Mosley never told Crockett that his wife, Diane Mosley, may have *requested* that Isaiah use the backhoe to dig out the pond; according to Mosley, it was "irrelevant" whether Jordan had used the backhoe at Diane Mosley's

request. *Id.* at 21. Mosley notes that he may have even warned Jordan of the possibility of arrest when he visited him at his home; Mosley points out that Isaiah was family and labels the warning "a courtesy." *Id.* at 27-28.

On 11/15/02, Crockett swore out an affidavit for Jordan's arrest, alleging without elaboration that "Isaiah Jordan did intentionally damage the property of Johnny Sheppard ... [in an amount exceeding] $500." Doc. # 15 exh. A; O.C.G.A. § 16-7-23(a)(1). Crockett admits that he relied entirely on Mosley's version of the events and did not investigate the incident. Doc. # 40 at 67. Crockett also admits that he did not learn any details about the incident until well after the warrant was issued and Isaiah was arrested. *Id.* at 7-8. Finally, Crockett noted that although a warrant is supposed to be based on the firsthand knowledge of the affiant, in this case "Mr. Jordan just wouldn't cooperate [in paying back the money] and a warrant was issued for his arrest to get him back down here [to Screven County] to talk to him." *Id.* at 9. The Magistrate Judge signed the warrant that same day, 11/15/02. Doc. # 15 exh. A.

About a month later, Jordan was arrested on the warrant by an officer in Richmond County, Georgia, where the Jordans reside. Doc. # 43 at 39. He was held in the Richmond County jail for three nights before a

Screven County officer came to transfer him. *Id.* at 47-48. Jordan -- who has no criminal record -- says he'll "never get over" the pain of his time in jail. *Id.* at 46.

Jordan was transferred to the Screven County jail after four days in the Richmond County Jail. Defendant Tommy Mosley -- the chief jailer for Screven County and an officer with the Screven County Sheriff's Department -- came to see Isaiah that morning. Doc. # 43 at 61; doc. # 39 at 5. Mosley asked him whether he was making arrangements to pay his "fine." Doc. # 43 at 6061. When Jordan answered that he wished to have his case heard in court, Mosley responded, "Well, it ain't going to be no court." *Id.*

When Dorothy Jordan arrived at the Screven County jail to post a bond for her husband, Mosley told her that the charges would be dropped if she paid $1,355.06, which included restitution for the damages to Sheppard's backhoe, a drop warrant fee, a "service fee," and a pickup fee for transferring Jordan from Richmond County. Doc. # 43 at 64, 70; doc. # 38 at 36-37; doc. # 15 exh. B. She paid that amount, Isaiah Jordan was released, and the "intentional damage" charge was dropped. Doc. #43 at 73.

Though Isaiah had been released and the charges against him dropped, the Jordans were still confused about why he had been arrested, so they

sought a meeting with defendant -- and Screven County Sheriff Mike Kile. Doc. # 43 at 74-75. Kile claimed not to know much about the reason for Jordan's arrest, nor did he show them a copy of the arrest warrant. *Id.* at 75-76. Kile did advise them that they should sue Tommy Mosley in Magistrate Court if they believed the arrest had been wrongful. Doc. # 39 at 16. The Jordans brought such a suit but dismissed it without prejudice. Doc. # 15 exh. D; doc. # 44 exh. D (order reversing entry of judgment for Mosley).

Instead, the Jordans brought this § 1983 action against Tommy Mosley and Mike Kile. Doc. # 1. The defendants now move for summary judgment on all claims. Doc. # 14.

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine factual dispute exists if the jury could return a verdict for the non-moving party. *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1085 (11th Cir. 2004). In examining the record, the Court views the evidence in the light most

favorable to the non-moving party. *Id.*

B. Fourth Amendment Claim

Isaiah Jordan alleges that his arrest was without probable cause and thus an unreasonable seizure in violation of the Fourth Amendment.[2] Doc. # 1 at 13. He contends that defendants Tommy Mosley and Mike Kile are responsible for the arrest because they directed Officer Crockett to swear out the arrest warrant. Doc. # 32 at 6.

While wrongful arrest involves the deprivation of a liberty interest under the Fourteenth Amendment, it is properly analyzed under the Fourth Amendment. *Walburn v. City of Naples, Fla.*, 2005 WL 2322002 at * 12-13 (M.D.Fla. 9/22/05) (unpublished). The critical inquiry in these cases is

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[2] Plaintiffs who have been jailed can bring § 1983 claims for false imprisonment under the Fourteenth amendment. *Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996); *Alfred v. Powell*, 2005 WL 3467331 at *8 (N.D.Ga. 12/12/05) (unpublished). Jordan raises no such claim here. Nor does he raise an emotional distress claim. *See K-Mart Corp v. Lovett*, 241 Ga. App. 26, 28-29 (1999) (manager's admission that she never saw plaintiff shoplift but nevertheless swore out a warrant knowing it would result in plaintiff's immediate arrest authorized jury's verdict for intentional infliction of emotional distress).

whether there was probable cause for the arrest. *See, e.g., Weinstock v. Wilk,* 296 F.Supp.2d 241, 246 (D.Conn. 2003). In *Malley v. Briggs,* 475 U.S. 335 (1986), the Supreme Court noted that there is not probable cause where "a reasonably trained officer ... would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." *Id.* at 345.

Here, no officer in the same position as Crockett could have reasonably believed that the affidavit contained probable cause. First, Crockett did not even have personal knowledge of the events stated in the affidavit. Doc. # 40 at 6-8; doc. # 15 exh. A (affidavit). Second, and more importantly, it was *never alleged* that Jordan did "intentionally" damage Sheppard's backhoe. The statute under which Jordan was arrested (O.C.G.A. § 16-7-23(a)) requires "intentional" damage to impose criminal liability. Neither Mosley nor Crockett ever had reason to believe that Jordan had damaged the backhoe intentionally, and -- amazingly -neither of them even pretends to have believed that Jordan did so.[3] *See*

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[3] Ironically, in the context of this suit Mosley was correct when he asserted that it was "irrelevant" whether Isaiah Jordan acted at Diana Mosley's request. Doc # 38 at 19-20. Here, the critical inquiry is whether the officers had probable cause to arrest Jordan; since neither of them had any belief that

doc. # 38 (Mosley's deposition); doc. # 40 (Crockett's deposition); *cf* doc. # 15 exh. A (Crockett's affidavit for warrant tracking language of statute without supporting facts). Because there was no evidence here that Jordan violated the statute under which he was charged, no reasonable officer would have sworn out the arrest warrant on these facts.[4]

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he had violated that statute under which he was charged, there was *not* probable cause, so it does not matter to this Court whether Isaiah had permission.

On the other hand, when Mosley and Crockett were determining whether Jordan should be arrested for damaging the backhoe, it should have been extremely relevant that he may have used it at Diane Mosley's request. Similarly, if this were a civil suit to determine who is liable to Johnny Sheppard for the damages to his backhoe, whether Isaiah had permission would be relevant

[4] *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978), provides a second basis for finding that Jordan has raised an issue of fact as to a Fourth Amendment violation. There the Supreme Court held that an officer violates the Fourth Amendment when he swears to false information knowingly or with reckless disregard for the truth in order to obtain a search warrant, where that false information is material to the finding of probable cause for an arrest. Here, Jordan has raised a question of fact whether Crockett "recklessly" swore out the affidavit, because Crockett admits that he had no basis to assert that Jordan intentionally damaged the backhoe. Doc # 40 at 6-9

Of course, finding no probable cause here does not end the inquiry, for -- in what was surely not an accident -- Screven County Deputy W.L. Crockett swore out the defective warrant, rather than defendant Tommy Mosley. Doc. # 15 exh. A. However, this is not nearly so strong an obstacle to liability as the defendants believe. *See* doc. # 15 at 9 (defendants' brief urging that Mosley cannot be held liable for Fourth Amendment violation because Crockett took out warrant).

Indeed, other federal courts have addressed this issue and found that a non-arresting officer can be liable for false arrest under 42 U.S.C. § 1983 if he instigated or commenced the proceedings. *See, e.g., Shattuck v. Town of Stratford,* 233 F.Supp.2d 301, 313-14 (D.Conn. 2002); *Fowler v. Robinson,* 1996 WL 67994 (W.D.N.Y. 2/15/96) (unpublished); *Lopez v. City of New York,* 901 F.Supp. 684, 688-89 (S.D.N.Y. 1995).

In fact, where a person "urges the arrest and prosecution of another without adequate investigation , such individual risks tort liability if there exists no probable cause to reasonably believe that the plaintiff committed a crime." *Corp. Property Invs. v. Milon,* 249 Ga.App. 699, 703 (2001) (physical precedent); *see also Fleming v. U-Haul Co. of Ga.,* 246 Ga.App. 681, 685 (2000) (upholding malicious

prosecution and false imprisonment claims when rental company demanded arrest of lessee for failure to return rental property on time).

To impose tort liability for instigating the arrest of another, the plaintiff must show (1) that there was not probable cause for the arrest; (2) that the arrest was instigated with malice; and (3) that the arresting officer did not exercise his independent judgment in carrying out the arrest. *See Willis v. Brassell*, 220 Ga.App. 348, 351-52 (1996).

Here, Jordan has demonstrated facts to show that defendant Tommy Mosley may be liable to him for a § 1983-based false arrest. First, no probable cause existed to support Jordan's arrest. *See supra* Part III.B. Second, evidence supports the reasonable inference that Mosley may have instigated Jordan's arrest, and that he did so "with malice." [5] Several of Mosley's statements -- not to mention the entire context of this case -- demonstrate that Mosley may have instigated Jordan's arrest out of personal spite rather than in an effort to apply state law. *See* doc. # 43 at 31 (Mosley demanded full payment from

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[5] "Malice consists in personal spite or in a general disregard of the right consideration of mankind. ." O.C.G.A §51-7-2 (defining malice for purposes of state law false arrest statute).

Jordan to "teach [him] a lesson"); doc. # at 60-61 (Mosley told Jordan he could not go to court to challenge debt); doc. # 38 at 26-28 (Mosley explains how he sought warrant for Jordan's arrest after Jordan failed to meet Mosley's demand for payment).

Third, it is clear that Crockett did not exercise his "independent judgment" in seeking the warrant for Jordan's arrest. Crockett admits that he did not investigate the incident at all and relied exclusively on Mosley's account. Doc. # 40 at 6-8. Crockett also admits that Mosley directed him to seek the warrant on Jordan because Jordan "just wouldn't cooperate, [so] a warrant was issued for his arrest to get him back down here to talk to him ...." *Id.* at 9. No state's criminal laws may be used to resolve private economic disputes. Jordan has raised a question of fact as to each element of his § 1983 Fourth Amendment/false arrest claim as to defendant *Tommy Mosley*, so this Court denies Mosley summary judgment as to that claim.

However, Jordan simply has not demonstrated any facts from which this Court can make a reasonable inference that defendant Mike Kile "instigated" Jordan's arrest. The only statement that even remotely links Kile to Jordan's arrest is Johnny Sheppard's speculation that Kile got "steamed up"

that Sheppard had not been repaid for the damages to the backhoe. Doc. # 41 at 13. This is simply not a strong enough link for this Court to infer that Kile instigated the arrest of Jordan; it is especially weak given that Kile had no personal stake in the matter. Moreover, even if the Court could infer a causal connection from this statement, the Jordans have demonstrated no facts to show that Kile instigated Jordan's arrest "with malice." *Willis,* 220 Ga.App. at 352. Thus, summary judgment as to the Fourth Amendment claim against Kile must be granted.

C. "Abuse of Process"

Jordan alleges that his wrongful arrest was an unlawful deprivation ofproperty under the Fifth and Fourteenth Amendments, as Mosley and Kile used the arrest to extort the repair costs for the backhoe from him. Doc. # 1 at 13-14.

However, the Fifth Amendment's protections only attach "when *the federal* government seeks to deny a liberty or property interest." *Cotney v. Franklin,* ___ F. Supp.2d ___, 2005 WL 1514047 at *7 (M.D. Ala. 2005) (citing *Knoetze v. US.,* 634 F.2d 207, 211 (5th Cir. 1981)) (emphasis added). Here, only Screven County officials were involved, so the Fifth Amendment does not apply.

Jordan supports his remaining Fourteenth Amendment allegation by concocting a so- called "constitutional abuse of process" claim. *See* doc. # 32 at 14-17, 23. Some circuits have recognized that a malicious abuse of the criminal process can amount to a procedural due process violation under the Fourteenth Amendment. *See, e.g., Cook v. Sheldon,* 41 F.3d 73, 80 (2d Cir. 1994) (citing *Jennings v. Shuman,* 567 F.2d 1213, 1220 (3d Cir. 1977)) (stating that malicious abuse of criminal process is "by definition a denial of procedural due process"); *see also Pottinger v. City of Miami,* 810 F.Supp. 1551, 1565 (S.D.Fla. 1992); *Mayer v. Wedgewood Neighborhood Coalition,* 707 F.2d 1020, 1023 (9th Cir. 1983).

However, other courts claim the statement in *Jennings* was mere dicta and refuse to recognize a new federal constitutional right. *Atiyeh v. Hairston,* 1993 WL 532976 at *6 (E.D.Pa. 12/22/93) (unpublished); *see also Landrigan v. City of Warwick,* 628 F.2d 736, 745 (1st Cir. 1980) (citing cases rejecting abuse of process as basis for section 1983 liability and choosing not to determine existence of such a right).

This Court joins the latter courts in declining the invitation to recognize this ill-defined federal constitutional right, especially since Georgia

specifically rejects claims for abuse of the criminal process. *Gillilan v. Still*, 199 Ga.App. 118, 118-19 (1991).[6] Any such new right to be free from the "malicious abuse of the criminal process" would inevitably turn on the question that is already central to Fourth Amendment analysis: was there probable cause for the arrest? This Court sees no reason to recognize a broad new right that would merely duplicate the specific, clear protections of the Fourth Amendment, and the plaintiffs have not offered the Court any reason why it should. *See also Allbright v. Oliver*, 510 U.S. 266, 273-74 (1994) (petitioner's claimed right to be free from prosecution without probable cause must be judged under Fourth Amendment rather than under "liberty interest" notions of substantive due process).

D. Deprivation of Familial Relationships

Jordan also alleges that the wrongful arrest

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[6] Obviously, state law does not define the contours of constitutional protections. *Wood v. Kesler*, 323 F.3d 872, 882 (11th Cir. 2003) This Court is simply noting that it will not create a new remedy for falsely-arrested or maliciously-prosecuted Georgians when neither the Constitution nor any federal statute clearly offers such protection. The existing protections of the Fourth Amendment and state law adequately address the situation at hand.

caused a deprivation of familial relationships in violation of due process and equal protection under the Fourteenth Amendment. Doc. # 1 at 14. He apparently relies on the familial right to privacy recognized in *Griswold v. Connecticut*, 381 U.S. 479 (1965). Isaiah Jordan's arrest and three-day stay in jail -- while unfortunate and potentially unlawful under the Fourth Amendment -- simply does not implicate the situation in *Griswold* and other familial rights cases. *See, e.g., Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

Therefore, this claim must be dismissed, for Jordan has not shown facts that would allow a jury to find a deprivation of familial relationships under the Fifth or Fourteenth Amendments. *See Albright*, 510 U.S. at 273.

E. First, Sixth, and Seventh Amendments

Jordan next claims that his arrest was in violation of the First Amendment. Doc. # 1 at 14-15. He also claims that Mosley and Kile deprived him of his Sixth and Seventh Amendment rights to a trial by jury. *Id.*

Jordan certainly offers a creative basis for his

First Amendment claim. He argues that his threat to Mosley that he would get a lawyer constituted protected speech, and he concludes that Mosley's decision to drop the warrant somehow suppressed that speech. Doc. # 32 at 24. The Court does not see how those facts could amount to a First Amendment violation, and the plaintiffs offer no supporting legal basis to point the Court in the right direction. Therefore, the plaintiffs have not shown facts on which a jury could reasonably find a First Amendment violation.

Nor does this Court understand the basis for Jordan's Sixth and Seventh Amendment claims. Doc. # 1 at 14-15. He barely even mentions these claims in his response to the motion for summary judgment, and his spare passages in support of them are nonsensical. Doc. # 32 at 23-24. Therefore, Jordan has not shown facts on which a jury could find either a Sixth or Seventh Amendment violation. *See, e.g., Soto v. City of New York*, 2205 WL 66893 at *5 (S.D.N.Y. 1/11/05) (unpublished) (Sixth Amendment rights do not attach until trial).

F. Deliberate Indifference

Jordan also claims that he was subjected to "deliberate indifference" to his medical needs while in prison. Doc. # 1 at 15. He asserts no basis for this

claim in the complaint, doc. # 1 at 15, and he does not mention it at all in his response brief. *See* doc. # 32. Therefore, this claim is abandoned. *See Sepulveda v. U.S. Att 'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2004) ("When an appellant fails to offer argument on an issue, that issue is abandoned").

G. State Law Claims

Isaiah Jordan also brings state law claims for false arrest and malicious prosecution. Doc. # 1 at 15; O.C.G.A. § 51-7-1; O.C.G.A. § 51-7-43. Defendants have not moved for summary judgment on these claims on the merits; they have only moved to have these claims dismissed for lack of jurisdiction if all of the federal claims are dismissed. Doc. # 15 at 18.

Since this Court denies summary judgment as to Jordan's Fourth Amendment claim against Mosley, *see supra* Part III.B., the Court retains supplemental jurisdiction over the state law claims under 28 U.S.C. § 1967.

H. Abuse of Process

Finally, Jordan sets forth the vague allegation that the defendants "maliciously used the criminal process to extort money from Plaintiffs by imprisoning Isaiah Jordan." Doc. # 1 at 1516. As the

Court reads it, this claim is the same as Claim II, which alleges that "[d]efendants caused plaintiffs Dorothy and Isaiah Jordan to be unlawfully deprived of property by extorting the $1,355.06 from them ...." Doc. # 1 at 13-14.

This Court has declined to recognize such a claim under the Constitution, and an abuse of process claim cannot stand under state law. *See Gillilan v. Still,* 199 Ga.App. 118, 118-19 (1991); *Hatcher v. Moree,* 133 Ga.App. 14, 16 (1974); *Floyd County Dairies v. Brooks,* 61 Ga.App. 239, 240-41(1939) ("Where a criminal process, valid on its face, has been maliciously sued out without probable cause, an action for malicious arrest or malicious prosecution is the only remedy") (citation omitted). Thus, summary judgment is granted as to this claim.

I. Eleventh Amendment Immunity

The Court notes that it has already granted summary judgment as to defendant Mike Kile on all of Jordan's *federal* claims. However, Jordan's pendent *state law* claims against Kile remain, so the Court will consider his immunity defenses.

Kile argues that he is entitled to immunity under the Eleventh Amendment for the claims against him in his *official* capacity. Doc. # 15 at 6-7.

He cites *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003), which granted Eleventh Amendment immunity to a Georgia county sheriff sued in his official capacity after determining that the sheriff's office acts as an "arm of the state" when it crafts a policy for the use of force in county prisons. *Id.* at 1309-10, 1319.

Jordan has not responded to Kile's claim of Eleventh Amendment immunity, so he is deemed to concede the point. The Court also concludes that it is bound by *Manders* to find that Sheriff Kite was acting as an "arm of the state" here when he carried out typical law enforcement duties. *See Manders*, 338 F.3d at 1312. Thus, under the Eleventh Amendment, Kile is immune from suit in a federal court as to Jordan's claims against him in his *official* capacity.

J. Official Immunity - State Law Claims

Both defendants also claim official immunity from the state law claims under the Georgia Constitution. In Georgia, "[o]fficial or qualified immunity protects county police officers from personal liability for discretionary action taken within the scope of their official authority, and performed without malice or an attempt to injure." *Hanse v. Phillips*, __ Ga.App. __, 2005 WL 3160368 at *1 (11/29/05) (citing *Cameron v. Lang*, 274 Ga.

122, 123 (2001)). "Malice" in the context of official immunity means "the deliberate intention to do wrong." *Merrow v. Hawkins*, 266 Ga. 390, 390-91 (1996); *see also Adams v. Hazelwood*, 271 Ga. 414, 414-15 (1999).

This Court rejects defendant Tommy Mosley's claim of official immunity from the state law claims. Though Mosley was acting within his discretionary authority as a Screven County officer, this Court has already found that he may have instigated Jordan's arrest out of spite. *See supra* Part III.B.; *see also* doc. # 43 at 31 (Mosley demanded full payment from Jordan "to teach [him] a lesson"); doc. # 38 at 27 (Mosley admitting that warrant was sought because Jordan had not satisfied Mosley's demand for payment). Those statements demonstrate that Mosley may have arrested Jordan out of a "deliberate intention to do wrong." *See Marrow*, 266 Ga. at 391. Thus, Mosley is not entitled to official immunity from the state law claims.

On the other hand, Mike Kile should be immune from the Jordan's state law claims against him. In investigating the incident before Jordan's arrest and meeting with the Jordans afterwards, he acted within his discretionary authority. *See supra* at 1-2. Additionally, the Jordans present no evidence to show that during these events Kite performed with

malice or with intent to injure the Jordans. *See Hanse,* 2005 WL 3160638 at *1. Thus, this Court grants defendant Mike Kite official immunity from the state law claims in both his *individual* and *official capacities.*

K. Federal Qualified Immunity

Both Kile and Mosley claim qualified immunity from the claims against them in their *individual* capacities. Qualified immunity protects state officials from suit in their individual capacities so long as their conduct "violates no clearly established statutory or constitutional rights of which a reasonable person would have known." *Harris v. Coweta County, Ga.*, __ F.3d __, 2005 WL 3501588 at *2 (11th Cir. 2005) (cite omitted). The purpose behind granting qualified immunity is to allow officials to carry out their discretionary duties "without fear of personal liability or harassing litigation." *Id.*

In a qualified immunity analysis, the Court first determines whether the officer was acting within the scope of his discretionary authority. *Id.* If he was, then the burden shifts to the plaintiff to show that (1) taken in the light most favorable to the plaintiff, the officer violated one of the plaintiff's constitutional rights; and (2) that at the time of the

incident, every objectively reasonable officer would have realized the acts violated clearly established federal law. *Id.* at *2-*3 (quotes and cites omitted).

In this case, Jordan has shown that defendant Tommy Mosley is not entitled to qualified immunity. Mosley is entitled to seek qualified immunity, as it was surely within the scope of his authority to instigate an arrest. But Jordan has met both prongs of the test to defeat the immunity. This Court has already found a question of fact whether the arrest violated Jordan's Fourth Amendment right. *See supra* Part III.B.; *see also Cook v. Sheldon*, 41 F.3d 73, 78 (2nd Cir. 1994) ("It is now far too late in our constitutional history to deny that a person has a clearly established right not to be arrested without probable cause") (cite omitted).

This Court has also already noted that no reasonable officer would have arrested Jordan on these facts, as there was no reason to believe that Jordan had "intentionally" damaged property. *Supra* Part III.B. (neither Crockett nor Mosley believed that Jordan actually violated statute); *see also* doc. # 40 at 9 (Crockett stating that Jordan was arrested "to get him back down [to Screven County] to talk to him").

Since nobody ever believed that Jordan actually

violated any law, there was not even "arguable probable cause" to arrest Jordan on these facts. *See, e.g., Whitner v. Moore,* 2005 WL 3501867 at *2 (11th Cir. 12/23/05) (unpublished) ("An officer is entitled to qualified immunity if there was even 'arguable' probable cause to arrest the defendant ... "). Since Jordan has raised a question of fact as to whether Mosley instigated Isaiah's wrongful arrest, and because any reasonable officer would have known that instigating Jordan's arrest violated his Fourth Amendment right, this Court holds that Mosley is not entitled to qualified immunity in his individual capacity.

As to Kile, the Court need not decide whether he has qualified immunity, because the Court has already either granted summary. judgment or granted Kile immunity on all claims. For that matter, Kile was not personally involved in the conduct leading to the alleged deprivation, *see* doc. # 15 at 7, and § 1983 liability generally "extends only to those persons who are personally involved in the deprivation of the federal rights of other persons." *Smith v. Montgomery County,* 573 F.Supp. 604, 609 (D.Md. 1983) (citation omitted).

Again, Jordan has not offered any facts to show Kile's personal involvement in his arrest, *see supra* Part III.B., and that includes supervisory

participation. *See, e.g., Braddy v. Fla. Dept of Labor & Employment Sec.*, 133 F.3d 797, 802 (11th Cir. 1998) (a supervisor may be liable for the constitutional deprivations caused by his subordinates when there is "a causal connection between actions of the supervising official and the alleged constitutional deprivation"). Hence, Kile's qualified immunity defense is moot on these additional grounds.

L. Section 1988 Attorneys' Fees

Since the Court has denied summary judgment as to Jordan's Fourth Amendment claim and state law claims against Tommy Mosley, *see supra* Part III.B., it will not dismiss his 42 U.S.C. § 1988 attorneys' fees claim, which is derivative of his § 1983 claim. *See* 42 U.S.C. § 1988(b).

M. State Constitutional Claims

Jordan offers no legal support for any of his state law constitutional claims. Doc. # 32 at 30. Those claims are therefore deemed waived, and the Court will not consider them. S.D GA.LOC.R. 7.1(b) ("[E]very motion filed in civil proceedings shall cite to supporting legal authority"); *Farrow v. West*, 320 F.3d 1235, 1242 n. 10 (11th Cir. 2003) (appeal issue deemed waived where, although appellant made

passing reference to issue in his briefs on appeal, appellant failed to argue the merits of the issue).

N. Screven County

This Order leaves the official capacity claims against Tommy Mosley pending. The defense has not moved for summary judgment on Isaiah's resulting claim against Screven County, Mosley's employer. *See* 32A AM.JUR.2D Federal Courts § 1130 *Immunity of State Officials* (2005) ("Whereas personal capacity suits seek to impose personal liability on a government official for action he takes under color of state law, official-capacity suits represent only another way of pleading an action against an entity of which the officer is an agent"); 15 AM.JUR.2D Civil Rights *Custom or Usage as Having Force of Law* § 74 (2005); *Decker v. Tinnel*, 2005 WL 3501705 at * 11 n. 3 (N.D.Ind. 12/20/05) (unpublished).

The County has raised neither Eleventh Amendment immunity against Isaiah's federal claims nor sovereign immunity against his state law claims. *See Burgest v. Colquitt County*, 2005 WL 3501852 at * 3 (11th Cir. 12/23/05) (unpublished). Hence, Screven County remains as an uncaptioned defendant in this case.

0. Dorothy Jordan's Claims

The Court discerns no cognizable claim of any sort raised by Isaiah's wife Dorothy Jordan. It is not enough to simply claim that one holds a "derivative" claim without citing to any statute or case law. Therefore, she is dropped from this case.

P. The Art of Lawyering

Finally, the Court notes that the plaintiffs' attorney in this case employed a scatter-shot, leave-no-constitutional-right-unturned approach to lawyering that has done no service to his clients' interests. A well-written, thorough brief on the most relevant claims here (false arrest, Fourth Amendment, etc.) would have been much more effective than the brief he did file, which named a violation of nearly every federal and state constitutional right while offering scant basis for such claims. The plaintiffs' lawyer's approach seems especially misguided in light of the fact that he failed to raise two claims that seem particularly relevant to the Jordans' case. *See supra* n. 2.

The Court recognizes the natural urge to preserve the client's rights by naming every conceivable claim. Nevertheless, more precise, targeted arguments are much more effective, as they focus the Court's attention quickly on the core issues in the case. The scatter-shot approach, on the other

hand, not only wastes the Court's time but also decreases the likelihood that the Court will identify those arguments that do have merit.

IV. CONCLUSION

Accordingly, the motion (doc. # 14) of defendants Tommy Mosley and Mike Kile for summary judgment against the plaintiffs is ***GRANTED*** in part and ***DENIED*** in part. The Court ***DISMISSES WITH PREJUDICE*** Claims II, III, IV, V, and VII against Tommy Mosley, but Claims I and VI remain against him in both his individual and official capacities. The Court ***DISMISSES WITH PREJUDICE*** plaintiffs' entire case against Mike Kile Finally, the Court ***DROPS*** plaintiff Dorothy Jordan from this case for lack of standing. All subsequent filings shall omit Dorothy Jordan and Kile from the caption.

This 11 day of January, 2006.

/s/ B. Avant Edenfield, Judge
United States District Court
Southern district of Georgia

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

ISAIAH and DOROTHY JORDAN,	)	
Plaintiffs,	)	Civ. Act. No. CV604-150
v.	)	
TOMMY MOSLEY, individually and in his official capacity as an officer of the Screven County Sheriff's Department,	)	COMPLAINT INJUNCTIVE RELIEF
MIKE KILE, individually and in his official capacity as Sheriff of the Screven County Sheriff's Department,	)	JURY TRIAL
Defendants.	)	

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
2004 DEC 10 AM 10:38
/s/ CLERK

COMPLAINT
Jurisdiction and Venue

1. This action is brought pursuant to 42 U.S.C. § 1983 and 1988 for deprivations of rights guaranteed under the First, Fourth, Fifth, Sixth, Seventh and Fourteenth Amendments of the United States Constitution, and similar provisions of the Constitution and laws of the State of Georgia.

2. Jurisdiction in this matter is conferred pursuant to 28 U.S.C. § 1291, 1341 (3) and (4) and the Plaintiff asks the Court to assert its supplemental jurisdiction pursuant to 28 U.S.C. § 1337.

Parties

3. Plaintiff Isaiah Jordan is an adult competent to prosecute this Complaint.

4. Plaintiff Dorothy Jordan is an adult competent to pursue this Complaint.

5. Isaiah and Dorothy Jordan are married.

6. Defendant Tommy Mosley is a Deputy Sheriff in the Screven County Sheriff's Department who is sued individually and in his official capacity for actions and refusals to act, under color of law; though not

necessarily within the law, for depriving Plaintiffs Isaiah and Dorothy Jordan of rights, liberties or privileges guaranteed all citizens under the First, Fourth, Fifth, Sixth, Seventh and Fourteenth Amendments of the United States Constitution and similar provisions of the Constitution and laws of the State of Georgia.

7. Defendant Mike Kile is the Sheriff of Screven County who is sued individually and in his official capacity for actions and refusals to act, under color of law; though not necessarily within the law, for depriving Plaintiffs Isaiah and Dorothy Jordan of rights, liberties or privileges guaranteed all citizens under the First, Fourth, Fifth, Sixth, Seventh and Fourteenth Amendments of the United States Constitution and similar provisions of the Constitution and laws of the State of Georgia.

Facts

8. In about November 2002, Plaintiff Isaiah and Dorothy Jordan attended a family gathering in Screven County, at the home of Dorothy's niece, Diane Mosley, who is married to and lives with Defendant Tommy Mosley.

9. The Mosley's were having a pond constructed on their property.

10. A contractor left a front end loader at the Mosley property.

11. Diane Mosley represented to the Plaintiffs that the contractor had given them permission to use the front end loader.

12. Plaintiff Isaiah Jordan had operated such equipment before and the Mosleys were aware of that fact.

13. Diane Mosley asked Plaintiff Isaiah Jordan if he would operate the front end loader and work on the pond.

14. Plaintiff Isaiah Jordan agreed to operate the loader and work on the construction of the pond,

15. Shortly after Plaintiff Isaiah Jordan began to operate the front end loader it broke.

16. The fact of the break down was reported to Defendant Mosley and all parties continued with the family gathering without reference to the damage or who should pay for it.

17. Several days later, Defendant Tommy Mosley contacted Plaintiff Isaiah Jordan demanding several hundred dollars for repairs of the front end loader.

18. Plaintiff Isaiah Jordan indicated to Defendant Mosley he should not be responsible.

19. Defendant Tommy Mosley became angry with Plaintiff Isaiah Jordan for refusing to pay for the repairs, and Defendant Mosley threatened to teach Plaintiff Jordan about the law.

20. On December 16, 2002, one or the other, or both of the Defendants caused a "pick up order" to be communicated to Richmond County Sheriff's Department, that caused a Richmond County Deputy to arrest Plaintiff Isaiah Jordan.

21. The arrest caused Plaintiff Isaiah Jordan the loss of his freedom, mental anguish, and other damages that will be demonstrated more particularly at trial.

22. The arrest, which was viewed by Plaintiff Dorothy Jordan, caused loss of her life and liberty interests in her association with her husband and deprivation of property interests.

23. Plaintiff Dorothy Jordan contacted the Screven County jail and was told that they would have her husband within twenty-four hours.

24. On December 18, 2002, Plaintiff Dorothy Jordan

contacted the Screven County jail inquiring about her husband Plaintiff Isaiah Jordan, and Defendant Tommy Mosley was put on the phone.

25. Plaintiff Dorothy Jordan tried to confront Defendant Tommy Mosley about having Plaintiff Isaiah put in jail, but Defendant Tommy Mosley claimed to have no knowledge of any wrongdoing.

26. On December 19, 2002, one or the other, or both, of the Defendants caused Plaintiff Isaiah Jordan to be transferred and booked into the Screven County jail.

27. Plaintiff Isaiah Jordan was then jailed in the Screven County jail.

28. When Plaintiff Isaiah Jordan was asked how he would pay for his bond he responded that he would do a property bond, and he told Defendant Tommy Mosley they would see him in court.

29. Plaintiff Dorothy Jordan called the Screven County Sheriff's Department and Defendant Tommy Mosley answered the phone.

30. Plaintiff Dorothy Jordan asked how much the bond was, and Defendant Tommy Mosley told her it was $1,355.06.

31. Plaintiff Dorothy Jordan instructed Defendant Mosley that she wanted to do a property bond.

32. Defendant Tommy Mosley told Plaintiff Dorothy Jordan he needed to talk to his boss, Defendant Kile, and see how Sheriff Kile wanted her to pay the bond.

33. Plaintiff Dorothy Jordan heard Defendant Tommy Mosley apparently talking on a radio to someone and then Defendant Mosley put her on hold.

34. Defendant Tommy Mosley got back on the phone with Plaintiff Dorothy Jordan and told her that his boss told him she could not do a property bond and that it had to be cash.

35. Plaintiff Dorothy Jordan went to the bank, paid for a cashier's check, and then drove to Screven County with her daughter.

36. On December 19, 2002, Plaintiff Dorothy Jordan and her daughter arrived at the Screven County jail with the check and Plaintiff Dorothy Jordan told an officer that she was there to bond out her husband, Plaintiff Isaiah Jordan.

37. The Officer looked at a folder and told Plaintiff Dorothy Jordan that he did not see any bond in the folder and asked Plaintiff who told her there was a

bond.

38. Plaintiff Dorothy Jordan said Defendant Tommy Mosley told her there was a bond, and the Officer told her to wait at the counter.

39. The Officer returned with Defendant Tommy Mosley, who pulled a piece of paper out of his pocket on which numbers were written.

40. Defendant Tommy Mosley began writing on a receipt pad and Plaintiff Dorothy Jordan asked him for a copy of the charges and he refused to show her any document.

41. Plaintiff Dorothy Jordan then requested to see the warrant, and Defendant Tommy Mosley told her she would get nothing from that office but a receipt, a copy of which is attached hereto as Exhibit A-1.

42. Plaintiff Dorothy Jordan asked for the phone number to the Mayor's office and Defendant Tommy Mosley told her the Mayor had nothing to do with the Sheriff.

43. Defendant Tommy Mosley told Plaintiff Dorothy Jordan there would be no court date, that he would shred all paper work, and that the warrant had been dropped.

44. Plaintiff Dorothy Jordan said nothing more to Defendant Tommy Mosley and soon thereafter Plaintiff Isaiah Jordan was released from custody.

45. On December 22, 2002, at 8:00 a.m., Plaintiff Dorothy Jordan called the Sheriff's Office and left a message that she would like an appointment with Sheriff Mike Kile and that he should call her back.

46. Defendant Sheriff Kile had not returned Plaintiff's call by 2:00 p.m., so she called his office again, and was told that Sheriff Kile was out and that the best time to call him would be December 26, 2002.

47. Plaintiff Dorothy Jordan called the office of the GBI and told a woman who answered the phone what had happened.

48. The GBI employee told Plaintiff the GBI could not help her at this time, and told her she needed to call the District Attorney's office, and that the District Attorney's office would then contact the GBI if they found a need for an investigation.

49. The GBI employee asked Plaintiff if she had spoken to Sheriff Kile about the incident and Plaintiff responded that she had not.

50. The GBI employee told Plaintiff that she should

talk to Sheriff Kile before she called the District Attorney, because the Sheriff might be able to clear up the situation, which Plaintiff agreed to do.

51. On December 26, 2002, at 8:29 a.m., Plaintiff Dorothy Jordan called Sheriff Kile, who set up an appointment for January 2, 2003, at 8:00 a.m.

52. Plaintiff Dorothy Jordan called the Mayor's office, but was told the Mayor was in the hospital.

53. On December 26, 2002, Plaintiff Dorothy Jordan tried to find a lawyer to help her but at that time could not.

54. On January 2, 2003, Plaintiffs met with Defendant Sheriff Kile and asked him to exercise his authority to refund the money wrongfully extorted from them by Defendant Deputy Tommy Mosley under color of law.

55. Defendant Sheriff Kile ratified the actions of the Defendant Deputy Tommy Mosley, and further personally participated in the cover-up of the wrongdoing of Defendant Deputy Mosley by falsely promising the Plaintiffs, that he, Defendant Kite, could produce a valid warrant to justify Defendant Tommy Mosley's actions.

56. Defendant Sheriff Kile refused to take appropriate

action to investigate or prosecute Defendant Tommy Mosley, and instead advised the Plaintiffs to file a claim against Defendant Tommy Mosley in Magistrate Court.

57. To make it appear even more official, Defendant Sheriff Kile advised the Plaintiffs in which court to file and how much to seek.

58. Defendant Sheriff Kile advised Plaintiffs about what would be a just claim.

59. On January 2, 2003, Plaintiffs filed a claim in Magistrate Court against Defendant Tommy Mosley, Case No. 703-001.

60. On January 9, 2003, Defendant Tommy Mosley was served.

61. In early January of 2003, Plaintiffs contacted District Attorney Mallard and asked him to take official action, but D.A. Mallard took no action.

62. Defendant Mosley filed an answer January 14, 2003, without a counterclaim.

63. Defendant Mosley caused a hearing to be scheduled for January 30, 2003 at 10:00 a.m.

64. On January 23, 2003, Plaintiffs contacted attorney Elmer Young.

65. Without Plaintiffs' knowledge, Defendant Tommy Mosley set up a hearing in the Magistrate Court without timely notifying the Plaintiffs of the hearing, and in violation of due process and equal protection caused a judgment to be taken against the Plaintiffs in his favor, on January 30, 2003.

66. On January 30, 2003, the Magistrate Court entered an order granting a judgment to Defendant Mosley.

67. After numerous attempts by Attorney Young to persuade the Judge of the Magistrate Court of Screven County to allow a dismissal without prejudice, the Judge took the position that the case was closed and that a judgment had been rendered for the Defendant Tommy Mosley on January 30, 2003.

68. Attorney Young's entered an appearance on behalf of the Jordans that was filed in Magistrate Court on February 3, 2003.

69. On or about February 14, 2003, Attorney Young met with Defendant Kile and asked Defendant Kile to have Defendant Deputy Mosley investigated.

70. Defendant Sheriff Kile took no corrective action and on February 20, 2003, determined he would not contact the GBI to have Defendant Mosley investigated, thereby ratifying Mosley's actions. (Exhibit B).

71. On February 28, 2003, Attorney Young filed an appeal on behalf of the Plaintiffs herein with the Superior Court of Screven County.

72. Based on motion of the Jordans, on June 30, 2003, the Superior Court of Screven County ordered the Magistrate Court of Screven County to vacate the judgment and to dismiss the action without prejudice.

73. The actions and refusals to act by Defendants, in derogation of the law, caused Plaintiff Isaiah Jordan unwarranted loss of his freedom, injury to his reputation, and monetary loss.

74 Plaintiff Isaiah Jordan was unreasonably jailed in Richmond County for three days and then transferred to Screven County where he was again unreasonably jailed, causing him extreme mental anguish and physical suffering.

75. While incarcerated Plaintiff Isaiah Jordan could not get needed medication in a timely manner.

76. The wrongful jailing caused Plaintiff Isaiah Jordan to be away from family and caused him past and present mental anguish and suffering, which will with reasonable certainty continue into the future.

77. The actions and refusals to act in derogation of the law by Defendants caused Plaintiff Dorothy Jordan past and present mental anguish and suffering, which will with reasonable certainty continue into the future.

78. The actions and refusals to act by Defendants, in derogation of the law, caused Plaintiff Dorothy Jordan financial loss.

79. Plaintiff Isaiah Jordan lost wages due to the wrongful incarceration.

80. Defendants caused Plaintiff Isaiah Jordan to be entered into the GCIC and NCIC database, permanently injuring his freedoms and liberties.

81. Defendants acted or refused to act with deliberate indifference to and in reckless disregard of the rights of all.

CLAIM I

82. Plaintiffs incorporate each and every paragraph above as if fully stated herein.

83. One or the other, or both, of the Defendants, caused Plaintiff Isaiah Jordan to be unreasonably seized without probable cause in violation of the Fourth Amendment of the U.S. Constitution.

84. No reasonable officer would have caused Plaintiff Isaiah Jordan to be arrested under the objective evidence present.

CLAIM II

85. Plaintiffs incorporate each and every paragraph above as if fully stated herein.

86. Defendants caused Plaintiffs Dorothy and Isaiah Jordan to be unlawfully deprived of property by extorting the $1,355.06 from them, by causing Plaintiffs to expend resources to seek justice, and by causing Plaintiffs to suffer other monetary loss.

87. Defendants violated the Fifth and Fourteenth Amendments of the U.S. Constitution.

CLAIM III

88. Plaintiffs incorporate each and every paragraph

above as if fully stated herein.

89. Defendants caused Plaintiffs Dorothy and Isaiah Jordan, without due process or in violation of equal protection, to be deprived of familial relationships, as protected life and liberty interests, in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution.

CLAIM IV

90. Plaintiffs incorporate each and every paragraph above as if fully stated herein.

91. Aided and abetted by Defendant Sheriff Kile, Defendant Mosley caused the retaliatory arrest of Plaintiff Isaiah Jordan because Plaintiff asserted protected speech and objected to Defendant Mosley's abuse of his power under color of law.

92. Defendants prohibited Plaintiffs from a trial by jury.

93. Defendants violated the First, Sixth, and Seventh Amendments of the U.S. Constitution.

CLAIM V

94. Plaintiffs incorporate each and every paragraph

above as if fully stated herein.

95. Plaintiff Isaiah Jordan was subjected to deliberate indifference to serious medical needs by Defendants.

CLAIM VI

96. Plaintiffs incorporate each and every paragraph above as if fully stated herein.

97. Defendants maliciously caused the false arrest of Plaintiff Isaiah Jordan. O.C.G.A. §§ 51-7-1 and 51-7-2.

98. Defendants maliciously prosecuted Plaintiff Isaiah Jordan. O.C.G.A. § 51-7-43.

CLAIM VII

99. Plaintiffs incorporate each and every paragraph above as if fully stated herein.

100. Defendants maliciously used the criminal process to extort money from Plaintiffs by imprisoning Plaintiff Isaiah Jordan.

101. WHEREFORE, the Plaintiffs pray for the following:

(a) that process issue in accordance with the law;

(b) that Defendants Mosley and Kile be made to reveal the names of other citizens who have been jailed or against whom jailing has been threatened, in order to collect disputed debts;

(c) that Defendants Mosley and Kile be appropriately disciplined;

(d) that Defendants be ordered to take action necessary to expunge public records of statements that Plaintiff Isaiah Jordan was arrested and to make affirmative statements that Plaintiff Isaiah Jordan was falsely arrested by them;

(e) that Plaintiffs be awarded such special damages as are reasonably proven at trial;

(f) that the Court award compensatory damages to the Plaintiffs against the Defendants, each of them, jointly and severally;

(g) that the Court award punitive damages against each Defendant individually;

(h) that the court award costs of this action including attorneys fees under 42 U.S.C. § 1988;

(i) that the court award such other and further relief as this court may deem just and necessary, including appropriate injunctive relief to prohibit further violations of the rights of the Plaintiffs and others.

A trial by jury is demanded.

Respectfully submitted this___day of December 2004.

/s/ John P. Batson
John P. Batson
Georgia Bar No. 042150
Attorney for Plaintiffs

P.O. Box
303 Tenth Street
Augusta, GA 30901

Phone: 706-737-4040
Fax: 706-736-3391

/s/ Elmer H. Young, III
Mr. Elmer H. Young, III
Georgia Bar No. 781750
Attorney for Plaintiffs

561 Green Street

Augusta, Georgia 30901
Phone: 706-724-8554
Fax: 706-724-5886

Prepared by:
John P. Batson
P.O. Box 3248
303 Tenth Street
Augusta, GA 30901
(706) 737-4040

Exhibit A-1

SCREVEN COUNTY SHERIFF'S DEPT.
339 Rocky Ford Road
Sylvania, Ga 30467
(912) 564-2013

12350

DATE 19 Dec. 2002

GENERAL FUND RECEIPT

Received of Dorothy Jordan for Isaiah Jorda Warrant # 02-11-801

AMOUNT	FOR
$ 1,036.06	Fines on damages (back hoe)
$ 144.00	Drop Warrant Fee
$ 45.00	Service Fee
$ 130.00	Pick up fee
$	
Total $ 1,355.06	

Exhibit A-1

/s/ Sgt. T. Mosley
OFFICER

WHITE COPY - VIOLATOR PINK COPY-OFFICE

RECEIVED
DEC 17 2004

Exhibit B

SCREVEN COUNTY SHERIFF'S OFFICE
339 ROCKY FORD ROAD
SYLVANIA, GEORGIA 30467

MIKE KILE TELEPHONE 912-564-2013
SHERIFF FAX 912-564-2022

FEBRUARY 20, 2003

E.H. "PETE" YOUNG
ATTORNEY AT LAW
561 GREEN STREET
AUGUSTA, GA 30901

RECEIVED
DEC 17 2004

RE: ISAIH JORDON
4389 PEACH ORCHARD ROAD
HEPZIBAH,GA 30815

DEAR MR. YOUNG:

NO INVESTIGATION WARRANTED BY THE GBI ON ABOVE CAPTIONED INDIVIDUAL PLEASE FEEL FREE TO CALL ME

Exhibit B

IF FURTHER DISCUSSION IS NECESSARY.

RESPECTFULLY,

/s/ MIKE KILE
SHERIFF

MK:de